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CODE OF COMMERCE IN FORCE IN CUBA PUERTO RICO AND THE PHILIPPINES

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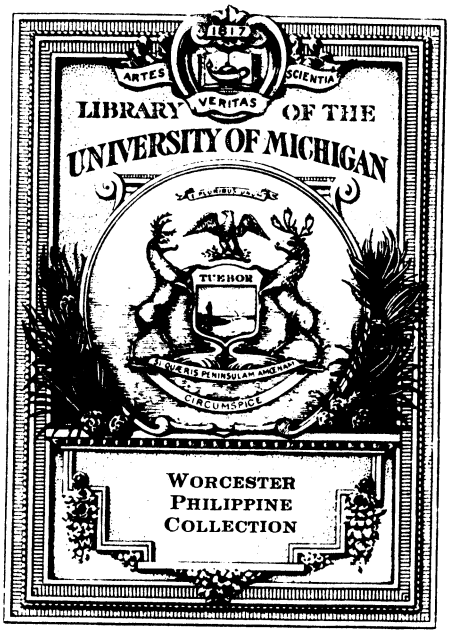

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TRANSLATION

OF

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THE CODE OF COMMERCE

IN FORCE IN

CUBA, PORTO RICO, AND THE PHILIPPINES,

AMENDED BY THE LAW OF JUNE 10, 1897,

INCLUDING THE COMMERCIAL REGISTRY REGULATIONS, EXCHANGE REGULATIONS, AND OTHER PROVISIONS OF A SIMILAR CHARACTER, WITH ANNOTATIONS AND APPENDICES.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS
WAR DEPARTMENT.
October, 1899.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1899.

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DEPARTMENT OF GRACE AND JUSTICE.

LAW.

Don Alfonso XII, by the grace of God, constitutional King of Spain:

Know all ye who see and understand these presents, that the Cortes have decreed and we have sanctioned the following:

First and last article. The Secretary of Grace and Justice is hereby authorized to publish as a law the annexed project of a Code of Commerce.

Therefore,

We order all superior courts, justices, chiefs, governors, and other authorities, civil as well as military and ecclesiastical, of whatsoever class and dignity, to observe and enforce the observance, comply and execute the present law in all its parts.

Given at San Ildefonso on August 22, 1885.

I, THE KING.

FRANCISCO SILVELA,
Secretary of Grace and Justice.

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ROYAL DECREE.

Taking into consideration the provisions of the law sanctioned by Me on this date, which authorizes the Government to publish as a law the form of a Code of Commerce, and in accordance with the opinion of the Council of Secretaries,

I decree the following:

ART. 1. The Code of Commerce referred to shall be observed as a law in the Peninsula and adjacent islands, from January 1, 1886.[1]

ART. 2. One copy of the official edition signed by me and countersigned by the Secretary of Grace and Justice shall be kept in the archives of the department and shall serve as the original for all legal purposes.

ART. 3. Commercial corporations in existence on December 31, 1885, which, according to article 159 of the said code, have the right of option between continuing to be governed by their regulations or statutes or to subjecting themselves to the provisions of the new code, must exercise this right by means of a resolution adopted by their members at a general extraordinary meeting, called especially for this purpose, in accordance with their present statutes, and being required to have this resolution published in the "*Gaceta de Madrid*" before January 1, 1886, and to present an authenticated copy thereof in the commercial registry. Corporations which do not make use of said right of option within the period mentioned shall continue to be governed by their own by-laws and regulations.[2]

---

[1] By a royal decree of January 28, 1886, this Code was extended to the islands of Cuba and Porto Rico and by another of August 6, 1888, to the Philippines.

Without prejudice to reproducing the text of the articles amended immediately after those of the Code for the Peninsula, which they substitute for said islands, we annex as appendices the text of the two royal decrees mentioned and their respective statements of reasons.

[2] With regard to the contents of this article, the following explanatory royal order was issued under date of November 17, 1885:

"Some commercial corporations having applied to this department requesting an interpretation of the contents of article 3 of the royal decree of August 22 last, believing that it could be interpreted as a limitation of the right granted them by article 159 of the new code of commerce, to choose between governing themselves by their own statutes and regulations, or to subjecting themselves to the provisions of the code, His Majesty the King (whom God preserve) has deemed it proper to decide that article 3 of said royal decree, far from being a limitation of the right granted by article 159 of the code to the corporations to which it refers, must be construed as a privilege granted the same to make use of their right of option even before the new commercial legislation goes into operation, in order not to be deprived from the day on which it becomes operative of the benefits which may accrue to them, and that therefore there is no reason to consider the absolute right established by article 159 as limited, and further that they may exercise it when they consider it advisable until the new code of commerce goes into operation."

See the addition to article 159 of this code.

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ART. 4. The Government shall issue, after hearing the full council of state, before the day on which the new code becomes operative, the proper regulations for the organization and management of commercial registries and exchanges, and the transitory provisions required by the said new organizations. [1]

Given at San Ildefonso on August 22, 1885.

ALFONSO.

FRANCISCO SILVELA,
Secretary of Grace and Justice.

---

[1] The regulations for the organization and management of commercial registries were published on December 21, 1885, in the *Gaceta de Madrid* of the 28th of the same month and year, and were extended to the islands of Cuba and Porto Rico with some modifications by royal decree of January 12, 1886.

With regard to the laws for the exchanges, those in force at the present time are the regulations for commercial exchanges of the Peninsula of December 31, 1885, extended with slight changes to Cuba and Porto Rico by royal decree of April 16, 1886, by virtue of which they went into operation in said islands on March 1 of the same year.

As temporary provisions of those new organizations referred to in the article which we annotate we can cite with regard to the first the royal decree of December 27, 1885, which is inserted as an addition to article 16 of this code, and that of May 11, 1886, regarding the record in commercial registries of the transfer of ownership of vessels; and among the complementary ones of the exchange laws the most interesting ones must be considered the special regulations of the Madrid Exchange, issued on June 18, 1886, and published in the "*Gacetas*" of June 26 and 27.

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CODE OF COMMERCE.[1]

BOOK 1.—MERCHANTS AND COMMERCE IN GENERAL.

TITLE 1.

MERCHANTS AND COMMERCIAL TRANSACTIONS.

ARTICLE 1. The following are merchants for the purposes of this code:

1. Those who, having legal capacity to trade, devote themselves thereto customarily.

2. Commercial or industrial associations which are formed in accordance with this code.

Articles 4 to 9 and 11 fix the persons who may trade; 13 and 14, those who cannot trade; and 15, the conditions under which foreigners may do so.

According to the declarations made by the Supreme Court in several opinions, among others those of March 16, 1870, and December 12, 1889, the persons who by chance make some commercial transactions cannot be considered merchants for the purposes of the prerogatives granted the latter by reason of their occupation, notwithstanding to their being subject, with relation to any disputes which may arise regarding these transactions, to the laws and jurisdiction of commerce.

With regard to the contents of No. 2 see article 122 of this Code.

ART. 2. Commercial transactions, be they executed by merchants or not, whether they are specified in this Code or not, shall be governed by the provisions contained in the same; in the absence of which, by

[1] This code has been in force in the Peninsula since January 1, 1886, and in Cuba and Porto Rico since May 1 of the same year. With regard to the Philippines, its text was published, with the modifications necessary for its adaptation to said islands, in the "*Gacetas*" of Manila of November 3 to 16 of 1888, from which latter date the fifteen days are to be computed, which, according to the royal decree of August 6, 1888, must pass from the date of its publication in said gazette in order that it may be considered in force in said archipelago.

Its provisions are therefore of general application in the entire Kingdom, the Spanish Antilles, and the Philippines, as stated in article 1 of the royal decrees which declare it in force in the respective territories. It was thus decided by the supreme court of justice with regard to the code of 1829, in its decisions of May 26, 1866, and April 2, 1862, according to which said code was promulgated for the entire Kingdom as a universal law with regard to commercial subjects and questions, with the high purpose of unifying the legislation in this respect and founded on the unalterable principles of justice; but it is not derogative, in our opinion, as stated in said decisions with regard to the repealed code, of all legislation in force with regard to commercial law to the date of its publication, because, aside from its not containing, like the former, a repealing clause, the present one not having the part which we might call that of mere procedure, the latter being included in a future reform of the law of procedure, we consider the code of 1829 in force, in so far as its provisions do not conflict with those of the present one and those of the law of civil procedure in force at the present time. This occurs with reference to bankruptcies, as may be deduced from the explanation of reasons for book 4 of this code.

With regard to the transfer of a commercial credit, the provisions of the Roman law can not be considered as violated in order to authorize an appeal in cassation, even if the question be in Catalonia, but only those of the code of commerce and civil common law, which is supplemental to contracts of this class. (Opinion of October 5, 1894. *Gacetas* of December 13 and 14.)

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the commercial customs generally observed in each place; and in the absence of both, by those of the common law.

Commercial transactions shall be considered those embraced in this Code and any others of a similar character.[1]

The article we annotate does not give any definition of commercial transactions, nor does it state, like some foreign codes, the transactions which must be considered commercial, evading in the first case the difficulties and dangers presented by definitions in codes, and in the second the inconveniences of an enumeration which closes the door to combinations unknown at the present time, but which may easily arise from individual interest and human progress. The formula adopted to avoid these embarrassments does not, however, decide the question, the idea of a commercial transaction being thereby rendered even more indeterminate than if any attempt had been made to solve either of the questions expounded.

ART. 3. The legal presumption of a customary engagement in commerce exists from the time the person who desires to trade gives notice through circulars, newspapers, handbills, posters exhibited to the public, or in any other manner whatsoever, of an establishment, the purpose of which is to conduct any commercial transaction.

According to a declaration of the supreme court, in an opinion rendered on June 7, 1871, notwithstanding that commercial transactions are customarily executed on another person's account, the persons transacting them must be looked upon as merchants.

In another opinion, dated January 20, 1872, it is stated that a customary engagement in commerce undoubtedly exists from an uninterrupted series of commercial transactions; but the same intention may be manifested by one transaction only, either expressly through advertisements or circulars, or impliedly by throwing open to the public a warehouse or shop; and in another, of June 14, 1883, that the person who customarily and ordinarily devotes himself to purchasing grain for conversion into flour, the latter being sold, must be considered a merchant, notwithstanding that he is not recorded in the registry and that he has not advertised his business to the public through newspapers, handbills, or permanent posters, which only constitute a case in which a customary engagement in commerce is presumed for legal purposes.

ART. 4. The persons having the following conditions shall have legal capacity to customarily engage in commerce:

1. Those who have reached the age of twenty-one years.
2. Those who are not subject to the authority of a father or mother nor to marital authority.
3. Those who have the free disposition of their property.

This article refers to Spaniards only. With regard to foreigners see article 15.

According to article 278 of the civil code, minority continues until the twenty-third year; therefore, in our opinion, to secure uniformity in legislation, the limit for legal capacity to trade should also be fixed at that age, for the simple reason that the former age being fixed, as a rule, in foreign laws, which are the ones fixing the limit at twenty-one years, which might as well have been fixed at twenty as at twenty-two or twenty-three years.

Article 154 of the civil code provides that the father, or in his absence the mother, has authority over their legitimate children who are not emancipated.

Acknowledged illegitimate children and adopted minors are under the authority of the father or mother who acknowledges or adopts them.

[1] See the doctrine of the opinions of November 21 and April 10, 1894, at the end of article 532.

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According to article 167 of said code, parental authority ceases (1) by the death of the parent or of the child; (2) by emancipation; (3) by adoption of the child.

Articles 168 and 171 of said code fix the cases in which the father and, in a proper case, the mother loses the parental authority over their children.

With regard to the marital authority, it is known that it is created by reason of marriage, during which time the personality of the woman disappears, the husband having her legal representation, as prescribed by article 60 of the civil code. This article and the following enumerate the acts which the woman can not perform. Article 62 treats of transactions executed in violation of the prescriptions of said articles, and article 63 the ones she may perform without permission from her husband.

See articles 6 to 12 of this code.

ART. 5. Persons under twenty-one years of age and incapacitated persons may continue, through their guardians, the commerce which their parents or persons from whom the right is derived may have been engaged in. If the guardians do not have legal capacity to trade, or have some incompatibility, they shall be under the obligation to appoint one or more factors who possess the legal qualifications, and who shall take their places in the trade.

As Mr. Alonso Martinez says in his statement of reasons, the previous proper declaration of the profits the minor or incapacitated person may derive by reason of continuing said commerce must be made, which shall be issued by the judicial authority, after the proceedings mentioned in the law of civil procedure.

According to No. 4 of article 269 of the civil code, the guardian requires authority of the family council "to continue the commerce or industry in which the person incapacitated or his ascendants, or those of the minor, had been engaged."

ART. 6. A married woman, over twenty-one years of age, may trade with the authority of her husband, contained in a public instrument recorded in the commercial registry.

ART. 7. A married woman shall also be considered authorized to trade, who does so with the knowledge of her husband.

Unless it appears to the contrary in a public instrument in the commercial registry, it shall be presumed that she trades with the consent of her husband.

ART. 8. The husband may freely revoke the permission expressly or impliedly granted the wife to trade, stating the revocation in a public instrument, which shall also be recorded in the commercial registry, besides being published in the official newspaper of the town, should there be any, or otherwise in that of the province, and announcing it to her correspondents by means of circulars.

This revocation can in no case prejudice rights acquired before its publication in the official newspaper.

For the purpose of evading doubts in the articles modified, in extending the code to Cuba, Porto Rico, and the Philippines, they will, like the present one, bear the proper indication. The lack thereof will signify that the text of the article was not modified and that, therefore, it is the same for the Peninsula, Cuba, Porto Rico, and the Philippines.

ART. 8. (Philippines.) The husband may freely revoke the permission expressly or impliedly granted the wife to trade, stating the revocation in a public instrument, which shall also be recorded in the commercial registry, besides being published in the official newspaper of

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the town, should there be any, or otherwise in that of the province, and announcing it to her correspondents by means of circulars. *The publication may also be made, if the husband requests it, by means of proclamations and through the common criers.*

This revocation can in no case prejudice rights acquired before its publication in the official newspaper.

ART. 9. A woman who at the time of contracting marriage is engaged in commerce shall require the permission of her husband to continue to trade.

This permission shall be considered as granted as long as the husband does not make known, in the manner prescribed in the foregoing article, the discontinuance of his wife in trade.

ART. 10. If the woman trades in the cases mentioned in articles 6, 7, and 9 of this code her dowry and personal property in addition to the dowry, and all the property and rights that both spouses may possess in common or by reason of the conjugal partnership, shall be liable for the results of her commercial transactions, the wife being permitted to alienate and mortgage her personal private property as well as that owned in common.

The personal property of the husband may also be alienated or mortgaged by the wife, if the authority granted by the former was or is extended to the same.

ART. 11. A married woman who is over twenty-one years of age, included in any of the following cases, may also trade:

1. Who lives away from her husband on account of a final decree of divorce.
2. Whose husband is subject to guardianship.
3. Whose husband is absent, his residence unknown, and his return not expected.
4. Whose husband is serving a sentence of civil interdiction.

With regard to declarations of absence, article 181 of the civil code states that if two years have elapsed without any news from the absentee, or from the time the last were received, and five years if the absentee has left any person in charge of the administration of his property, the absence may be declared.

According to the penal code of 1870 the punishment of interdiction includes, during the time of serving it, the privation of the right of parental authority, marital authority, administration of his property, and to dispose of the same by means of an act *inter vivos*.

According to article 229 of the civil code, the wife of a criminal who is serving a sentence of civil interdiction, exercises the parental authority over the children in common during the duration of the interdiction, if she is of age, but if she is a minor she shall act under the direction of her father, and, in a proper case, of her mother, and in the absence of both, of her guardian.

ART. 12. In the cases referred to in the preceding article, only the private property of the wife and that owned in common or of the conjugal partnership which has been acquired by virtue of trade, shall be liable for the results thereof, the wife being permitted to convey or mortgage either.

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After the absence of the husband has been legally declared, the wife shall moreover have the rights granted her in such case by the common law.

The provision in force at the present time is article 188 of the civil code, which prescribes that the wife of an absentee, of age, may freely dispose of the property of any class whatsoever which may belong to her; but she can not alienate, exchange, nor mortgage the private property of the husband, nor that of the conjugal partnership, except by virtue of judicial authority.

ART. 13. The following can not trade nor exercise any direct administrative or economic representation in commercial or industrial associations:

1. Persons sentenced to civil interdiction, until they have served their sentence or have been amnestied or pardoned.

2. Persons who have been declared bankrupts, until they have obtained their discharge, or have been authorized, by virture of an agreement accepted at a general meeting of creditors and approved by the judicial authority, to continue at the head of their establishment, the discharge being considered in such cases as limited to the contents of the agreement.

3. Those who on account of laws or special provisions can not trade.

These prohibitions are a development or interpretation of the provisions contained in the third condition of article 4, the first being in harmony with the provisions of article 43 of the penal code for the Peninsula, article 41 of that for Cuba and Porto Rico, and 42 of that for the Philippines.

With regard to No. 2, see articles 870 et seq. of this code, and in relation to No. 3, article 14 of the same, and articles 28 and 29 of the notarial regulations.

We do not understand why other incapacitated persons have not been included in this article, such as prodigals, etc., to whom its provisions should be applied by reason of analogy, because between the prodigal and the person subject to civil interdiction there exist no notable differences for the purposes of the article we annotate.

ART. 14. The following can not engage in the commercial profession, neither in person nor by proxy, nor can they hold any direct administrative or economic position in commercial or industrial associations within the bounds of their districts, provinces, or towns in which they discharge their duties:

1. Associate justices, judges, and officials of the department of public prosecution (*ministerio fiscal*) in active service.

This provision shall not be applicable to mayors (*alcaldes*), municipal judges, and municipal prosecuting attorneys, nor to those who by chance are discharging judicial or prosecuting functions.

2. Administrative, economic, or military chiefs of districts, provinces, or garrisons.

3. Employees in the collection and administration of public funds of the State appointed by the Government.

Persons who administer and collect temporarily or their representatives are excepted.

4. Money and commercial brokers of any class whatsoever.

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5. Those who by virtue of laws or special provisions can not trade in certain territory.

With regard to this article, which, in so far as it refers to the officials of the judiciary, is of the same tenor as article 119 of the organic law, it is advisable to remember that according to a decision of the chamber of administration of the supreme court and of the full council of state the office of receiver of a bankrupt company is included in the incompatibility.

ART. 15. Foreigners and associations established abroad may trade in Spain, subject to the laws of their country, in so far as their capacity to transact business is concerned; and to the provisions of this code in all that refers to the creation of their establishments within the Spanish territory, to their commercial operations, and to the jurisdiction of the courts of the country.

The provisions contained in this article shall be construed without prejudice to what may, in particular cases, be established by treaties and conventions with other powers.

The provisions of this article are in harmony with article 2 of the present constitution, which permits foreigners to freely establish themselves in Spanish territory and engage in industry or dedicate themselves to any occupation for the discharge of which no certificates of proficiency issued by Spanish authorities are required.

The treaties of commerce and navigation more recently celebrated with the nations which have the largest commercial relations with Spain, and which are actually in force, are the following: The one made with Portugal, signed at Madrid on March 27, 1893, and ratified on July 17 of the same year, the provisions of which are applicable on the part of Spain to its territory of the Peninsula, the Balearic and Canary islands, and on the part of Portugal to its territory of the Peninsula and to the Madeira and Azores archipelagoes, from the date of the exchange of the ratifications and which is to continue in force for ten years from said date; the conventions celebrated with Sweden and Norway, signed at Aranjuez on June 27, 1892 (*Gaceta* of November 1, 1893), ratified and duly exchanged at Madrid on August 9, 1893, which went into operation on January 1, 1894, and the royal orders for its application of December 26, 1893 (*Gaceta* of the 31st), and the amendment to the additional protocol of that of Norway with regard to article 16 of the convention executed at Stockholm on October 7, 1895; the declaration relating to commerce between Spain and the Netherlands, signed at Madrid on July 12, 1892 (*Gaceta* of December 14, 1893), and the royal decree explanatory of the same of December 26, 1893 (*Gaceta* of the 31st); the convention celebrated between Spain and Switzerland on July 13, 1892 (*Gaceta* of November 15, 1893), which went into operation on January 1, 1894, with the rules issued for its application by royal order of December 26, 1893; the one agreed upon with Colombia, signed at Bogotá on June 23, 1892, the ratifications of which were exchanged on June 23, 1893; the one celebrated with Denmark on July 4, 1893, ratified and the ratifications exchanged on August 10, 1894, and the royal order of June 10, 1895, containing rules for its fulfillment.

With regard to the other nations, according to the provisions of the royal decree of December 31, 1893 (*Gaceta* of January 1, 1894), and its explanatory royal order of the same date, there shall be applied from January 1, 1894, to products of the soil and industry of Germany, Austria-Hungary, Denmark, France (including Algiers), Great Britain and her colonies, and Italy, the lowest customs duties and the tariff advantages granted Switzerland, Sweden and Norway, and the Netherlands and her colonies by the treaties mentioned in the foregoing paragraph, until the commercial agreements recently concluded with Spain, and which are awaiting the approval of the Cortes are definitely approved.

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Similar treatment shall be accorded the products of the Argentine Republic, Bolivia, Costa Rica, Chile, Guatemala, the Hawaiian Islands, Morocco, Mexico, Nicaragua, Paraguay, Persia, Peru, Salvador, Uruguay, and Venezuela, which by virtue of old conventions enjoy the privileges granted the most favored nation.

Annam, Belgium, China, Colombia, Ecuador, Japan, Russia (including Finland), and Siam shall continue from January 1, 1894, to enjoy the advantages of the second customs tariff, the first tariff being applied to the other countries not mentioned. (Royal order of December 31, 1893. *Gaceta* of January 1, 1894.)

We should, moreover, take into consideration, on account of its great interest to commerce in general, the agreement in force relating to the international registry of trade or commercial marks made between Spain, Belgium, France, Guatemala, Italy, the Netherlands, Portugal, Switzerland, and Tunis, signed at Madrid on April 14, 1891; the one made, also at Madrid and on the same date as the foregoing one, between Spain, Brazil, France, Great Britain, Guatemala, Portugal, Switzerland, and Tunis, for the purpose of suppressing false certificates of origin of merchandise; the international convention of union for the protection of industrial property of March 20, 1883, celebrated between Spain, Belgium, Brazil, the United States, France, Great Britain, Guatemala, Italy, Norway, the Netherlands, Portugal, Sweden, Switzerland, and Tunis and the protocol relating to the support of the international office for said union, signed on April 15, 1891, and ratified on June 15, 1892; the declaration between Spain and Great Britain for the purpose of regulating the situation of corporations and other industrial, commercial, and financial associations, published on February 2, 1883, and the convention with the United States relating to the suspension and differential tonnage duties or taxes, signed at Madrid on December 21, 1887.

ART. 15. (Philippines.) Foreigners and companies incorporated abroad may trade in the *Philippines*, *Jolo*, *Marianas*, *Palaos*, *and the Carolines* subject to the laws of their country, in so far as their capacity to transact business is concerned, and to the provisions of this code in all that refers to the creation of their establishments within the Spanish territory, to their commercial operations, and to the jurisdiction of the courts of the country.

The provisions contained in this article shall be construed without prejudice to what may, in particular cases, be established by treaties and conventions with other powers.

TITLE II.

COMMERCIAL REGISTRIES.

ART. 16. A commercial registry shall be opened in all the capitals of provinces, composed of two independent books, in which there shall be recorded:

1. Private merchants.
2. Associations.

In the coast provinces, and in those of the interior where it is considered advisable on account of the existence of a navigation service, the registry shall contain a third book in which to record vessels.

The regulations for the organization and management of commercial registries in force at the present time are those of December 21, 1885, extended to the islands of Cuba and Porto Rico by the royal decree of January 12, 1886.

Articles 28 to 56 of said regulations, as well as article 3 of the temporary provisions of the same, are in harmony with the contents of this article.

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Furthermore, for the compliance with the prescriptions of the last paragraph, a royal order was issued on December 27, 1885, the body of which is as follows:

"1. A book for the purpose of recording vessels shall be opened in the commercial registries of Barcelona, Tarragona, Valencia, Alicante, Almería, Málaga, Cádiz, Huelva, Coruña, Santander, Bilbao, San Sebastián, Palma de Mallorca, and Santa Cruz de Tenerife, which at the same time are capitals of provinces and seaports, besides the one to be opened in the commercial registry of Seville, according to the said regulations.

"2. The book of registry of vessels shall also be established at Gijón, Rivadeo, Vigo, Motril, Cartagena, and Palamós, capitals of maritime provinces, corresponding to the civil ones of Oviedo, Lugo, Pontevedra, Granada, Murcia, and Gerona.

"3. By virtue of the provisions contained in article 2 of the regulations, the registers of property of the said towns shall temporarily keep these books, with the exception of the one to be established at Palamós, which shall be in charge of the prosecuting attorney of the municipal court.

"4. Until the books referred to in articles 6 and 13 of the said regulations are furnished, the entries shall be made in provisional pamphlets, and the receipts shall be issued in the usual form."

Since May 1, 1886, there has been established in each one of the six provinces of the island of Cuba and in the capital and in the city of Ponce, of the island of Porto Rico, the commercial registry, composed of the two books referring to merchants and associations.

The registry of vessels was established on the same date in Havana for the same province and that of Pinar del Rio; in Matanzas and Santiago de Cuba for the respective provinces; in Cienfuegos for that of Santa Clara; in Nuevitas for that of Puerto Príncipe, and also in San Juan Bautista de Puerto Rico, and in Ponce for that island.

The commercial registry of the capital of Porto Rico includes the territories of the two inferior courts of the same capital and those of Arecibo, Humacao, Caguas, and Aguadilla; the one established at Ponce embraces the territories of the inferior courts of Ponce, Mayagüez, San Germán, and Guayama.

ART. 17. The record in the commercial registry shall be optional for private merchants and compulsory for associations established in accordance with this code or with special laws, and for vessels.

In the old code (according to article 25) the record in the general registry was obligatory for merchants and commercial associations, vessels not being mentioned. At the present time compliance with this formality is optional in the first case, and obligatory in the last two.

ART. 18. A merchant who is not registered can not request the record of any document in the commercial registry nor take advantage of its legal effects.

See articles 26, 27, and 29 of this code.

ART. 19. Registers shall keep the book necessary for record, stamped and folioed and with a memorandum on the first folio, signed by the municipal judge, stating the number of folios each book contains.

Where there are several municipal judges, any one of them may sign the memorandum.

In the same article modified for the Philippine Islands the word *municipal* is substituted by *of the peace*, a change which is justified, the municipal régime being almost unknown there up to the present time.

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With reference to the fees to be charged by municipal judges for keeping the commercial registry, the royal order of December 29, 1885, prescribed that the regulations for the organization and management of the same of December 21 of said year be observed.

With regard to the manner of keeping the registry, see articles 5 to 19 of the regulations mentioned.

ART. 20. The register shall enter in chronological order in the registry and general index all the merchants and associations which have themselves recorded, giving each sheet the proper correlative number.

ART. 21. On the sheet of the record of each merchant or association there shall be entered:

1. Name, firm name, or title.
2. The kind of commerce or transactions engaged in.
3. The date on which business is to begin or was begun.
4. The domicile, with a statement of the branches which may have been established, without prejudice to recording the branches in the registry of the province in which they are domiciliated.
5. The articles constituting a commercial association, whatever may be its object or appellation, as well as instruments modifying, rescinding, or dissolving the said associations.
6. General powers of attorney and revocation of the same, should there be any, given to managing partners, factors, employees, and any other agents.[1]
7. The authorization of the husband for his wife to trade, and the legal or judicial authority of the wife to administer her property on account of the absence or incapacity of the husband.
8. The revocation of the permission granted the wife to trade.
9. Dowry instruments, marriage agreements, and the deeds which prove the ownership of the personal property in addition to the dowry of the wives of merchants.
10. The issue of shares, certificates, and obligations of railroads and of all kinds of associations, be they of public works, credit, or others, stating the series and number of the certificates of each issue, their interest, revenue, amortization, and premium, should they have either, the total amount of the issue, and the property, works, rights, or mortgages, should there be any, which are liable for their payment.

There shall also be recorded, in accordance with the provisions of the foregoing paragraph, the issues made by private parties.

11. The issues of bank notes, stating the date, class, series, quantity, and value of each issue.
12. The certificates of industrial property, patents, and trade-marks, in the form and manner established by law.

Foreign associations which desire to establish themselves or create branches in Spain[2] shall present and have recorded in the registry,

[1] See in the addition to article 279 the doctrine of the opinion of February 13, 1895.

[2] *The Philippines*, according to the same article modified for said island.

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besides their statutes and the documents prescribed for the Spanish ones, the certificate issued by the Spanish consul stating that said companies have been established and authorized according to the laws of the respective country.[1]

To record the issues which private merchants may make according to the provisions of the article we annotate, as well as their partial or total cancellation, and the certificates mentioned in number 12, the provisions of articles 40 to 45 of the commercial registry regulations shall be observed. (Article 32 of the same.)

The supreme court decided in an opinion of May 8, 1885, that the decision which gives value and legal force to copartnership agreements before being recorded violates articles 22, 25, 285, and 288. (Referring to the code repealed.)

With regard to the provisions of number 9, see article 180, first paragraph, of the mortgage law for the Peninsula and 179 of that for the colonies.

See also articles 27 and 28 of this code.

In so far as the prescriptions of number 10 are concerned, see the last paragraph of article 153 of the mortgage law for the Peninsula and the only paragraph of the same article of the mortgage law for the colonies.

The legislation in force on patents and trade-marks, cited in number 12, is composed of the law of July 30, 1878, the royal decree of November 20, 1850, on marks and seals on industrial property, the royal decree of August 21, 1884, regarding trade-marks in the colonies, and the agreements relating to the international registry of trade or commercial marks of April 14, 1891, cited in the note to article 15 of this code.

With regard to the provisions of this article, see also the third appendix at the end of this code.

ART. 21. (Philippines.) (It only differs from the one for the Peninsula as stated in the foregoing note.)

ART. 22. In the registry of vessels there shall be stated:

1. The name of the vessel, kind of equipment, system or power of the engines, if it is a steamer, stating whether they are nominal or indicated horsepower; place of construction of the hull and engines; year thereof; material of the hull, stating whether it is of wood, iron, steel, or mixed; principal dimensions of length, breadth of beam, and depth of hold; distinctive signal which it bears in the International Code of Signals; finally, the names and domiciles of the owners or part owners of the same.

2. The changes in the ownership of vessels, in their name, or in any of the other conditions enumerated in the foregoing paragraph.

3. The imposition, modification, or cancellation of liens of any class whatsoever which encumber vessels.

See the regulations for the commercial registry (articles 45 to 56) and those for the merchant marine.

Article 15 of the law in force regarding marine mortgages of August 21, 1893, prescribes that the first record of each vessel shall be that of the ownership thereof, and shall state the circumstances enumerated in the article we annotate. The absence of said record shall be sufficient cause to refuse any other entry until this absence is remedied at the instance of the person having a legitimate interest therein.

[1] See in the proper appendix the modification to this article suggested in the project published in the *Gaceta* of April 27, 1892.

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The record of the ownership of a vessel shall be made in the commercial registry by presenting a certified copy of its register or entry, issued by the naval commander of the province where it is registered.

When the vessel is registered to navigate in a point belonging to a registry other than that of its construction, registers shall require a proper certificate of the registry of the place where said vessel was constructed. The same shall be done in cases of transfer of registers or entry of a vessel when the latter has already been registered or authorized to navigate.

ART. 23. The record shall be made, as a general rule, by virtue of notarial copies of the instrument presented by the person interested.

The record of notes, obligations, or instruments payable to order and to bearer, which do not include mortgages of real estate, shall be done by virtue of the certificate of the instrument in which there appears the agreement of the person or persons who make the issue and the conditions, requisites, and guaranties of the same.

When these guaranties consist of the mortgage of real estate, the proper instrument shall be presented for entry in the commercial registry, after having been recorded in the registry of property.

ART. 23. (Philippines.) (See the addition which follows.)

The words *after having been recorded in the registry of property* do not exist in the same article amended for the Philippines.

With regard to this amendment the codification commission states: "The mortgage law not being in force in the Spanish provinces of Oceania, and there not existing, therefore, a registry of property as there does here, it was necessary to modify articles 23 and 27 in harmony with the spirit of the Peninsular law and the juridical organisms in force there." Said institution being already established there, since the mortgage law for the Peninsula (December 10, 1889) was extended to the same with the proper modifications, and the mortgage law and regulations for the colonies having been subsequently promulgated (law of July 14, 1893), this difficulty no longer exists.

ART. 24. Articles constituting associations not recorded shall be binding between the members who execute the same; but they shall not prejudice third persons, who, however, may make use thereof in so far as advantageous.

This applies the principle of the mortgage law, by virtue of which, although contracts which are not recorded in the registry of property, have no effect against third persons, they are binding between the parties thereto.

With regard to the contents of the similar article of the code, which has been repealed (article 28), the supreme court declared in an opinion of February 14, 1870, that the absence of public articles of association, as well as their not being entered in the general commercial registry, can not prejudice third interested persons who may have made contracts with the same after its readiness to transact business has been made public in the customary manner; and in another one, of July 3, 1876, that the omission of the record of articles of association can only affect the members among themselves.

ART. 25. There shall also be entered in the registry all resolutions or acts which produce an increase or decrease in the capital of commercial associations, no matter what may be their denomination, and those which modify or alter the conditions of the recorded instruments.

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The omission of this requisite shall produce the effects mentioned in the foregoing article.

(See the note to article 175 of this code).

ART. 26. The instruments recorded can only produce a legal effect to the detriment of a third person from the date of their record, not being invalidated by any previous or subsequent ones which are not recorded.

ART. 27. Dowry instruments and those referring to personal property in addition to the dowry of the wife of a merchant, not recorded in the commercial registry, shall have no right of preference over other credits.

Real estate and property rights recorded in the registry in favor of the wife prior to the origin of the concurrent credits are excepted.

ART. 27. (Philippines.) Dowry instruments and those referring to the personal property in addition to the dowry of the wife of a merchant, not recorded in the commercial registry, shall not have any right of preference over other credits.

Real estate and property rights *in the same acquired by the wife* prior to the origin of the concurrent credits are excepted.

Regarding the reasons for the modification of this article with reference to the Philippines see the note to article 23, which may be considered reproduced here.

ART. 28. If a merchant should omit to enter in the registry the dowry property or personal property in addition to the dowry of his wife, the latter may do so, or it may be done in her name by her parents, brothers, or uncles by consanguinity, as well as by those who are or have been the guardian or curator of the said wife, or who constitute or have constituted the dowry.

ART. 29. Powers of attorney which are not recorded shall be effective between the principal and the attorney; but they can not be made use of to the prejudice of a third person, who, however, may base his claim on the same in so far as may be favorable to him. [1]

ART. 30. The commercial registry shall be public. The register shall give to whomsoever requests it any data with reference to what appears in the record sheet of each merchant, association, or vessel. He shall also issue true copies of the entire or of a part of the sheet mentioned to any person who requests it in writing.

See articles 57 to 62 of the regulations for commercial registries.

ART. 31. The commercial register shall have under his charge, where there is an exchange, copies of the daily quotations of the properties negotiated and the exchanges fixed therein.

The copies shall serve as original instruments in all cases of investigation and verification of exchanges and quotations on determined dates.

See article 80 of this code and article 50 of the regulations for commercial exchanges.

[1] See in the addition to article 279 the doctrine of the opinion of February 13, 1895.

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ART. 32. The office of commercial register shall be filled by the government after a competitive examination.

ART. 32. (Philippines.) The office of commercial register shall be filled by the *supreme government of the nation* after a competitive examination. *Until this examination is held, a commercial registry shall be opened in the capitals of provinces and placed in charge of a public notary. In capitals where there is more than one public notary the senior one in service of those who hold their positions by virtue of a competitive examination shall be preferred; in default of the latter the senior in service of those who practice with academic degrees, and where there are none the registry shall be placed in charge of the public notary of the inferior court with the oldest protocol. In case there should not be any person filling the foregoing conditions the commercial registry shall be kept by the official designated in accordance with law to issue certifications.*

The temporary appointments of commercial registers shall be made by the Governor-General at the suggestion of the chamber of administration of the audiencia.

In the report of the committee which accompanies the royal decree of August 6, 1888, extending the code to the Philippines, the reasons for this modification are extensively expounded. See the proper appendix.

TITLE III.

BOOKS AND BOOKKEEPING OF COMMERCE.

ART. 33. Merchants shall be required to keep—

1. A book of inventories and balances.
2. A daybook.
3. A ledger.
4. A copying book for letters and telegrams.
5. The other books required by special laws.

Copartnerships and companies shall also keep a book or books of minutes, in which there shall be entered all the resolutions which refer to the social progression and transactions adopted at general meetings and at those of boards of directors.

The name of inventory and balance book is given to the book in which a merchant is required to record the money and other property, rights, shares, and debts which he had when he began his business and the balance which he must strike at the end of each year. He shall draft the same in accordance with the provisions of article 37 of this code.

No stamp taxes are paid when said books are presented to the courts in accordance with article 36.

In the daybook there shall be entered the transactions which have taken place each day in the manner prescribed by article 38.

An establishment which has branches in the same town of its residence shall not be required to keep a daybook in each one of them; but when the branches are situated in a town other than the one in which the principal office is located they must keep one, it being impossible otherwise to comply with the obligations prescribed by the code of commerce to make a statement at the proper time of the obligations contracted by the branches with the head commercial office or company interested. (R. O. of December 25, 1889. *Gaceta* of April 20, 1890.)

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A ledger is called the book in which merchants keep an open account with the persons with whom they transact business, and with the article or branch in which they speculate.

The entries are made according to strict order of dates, placing on one page the credits of each account and on the opposite one the debits, this book having with this object in view the same folio on both sides.

In the copying book of letters and telegrams there is copied all the commercial correspondence, not omitting any detail, no matter how insignificant it may appear, correcting any mistakes which may occur in copying letters, immediately after the same.

See articles 41 and 42 of this code.

The inventory and balance books, the daybook, and ledger are subject to the stamp tax, and pay at the rate of 5 pesetas for the first folio and fifteen céntimos for each succeeding one; the copying books for letters and telegrams of banks, commercial associations, industrial enterprises, marine and life insurance companies, and also those of foreign or national merchants who keep their books according to the provisions of this code, shall pay at the rate of two and one-half céntimos per folio, without the previous payment of which they can not be authorized by the municipal court of the proper district under the personal liability of the official charged with said duty if he does not have stamps. The payment shall be made in the paper money of the State and shall have the proper memorandum, subscribed by the municipal judge who is to authorize and rubricate said books. All the books enumerated shall be used for several consecutive years; but if for any reason whatsoever the industry engaged in which required the keeping of such books is interrupted or suspended, they must also be renewed when the business is resumed.

ART. 34. Any other books which may be considered advisable, according to the system of bookkeeping adopted, may also be kept.

Such books shall not be subject to the provisions of article 36; but any which may be considered proper may be legalized.

ART. 35. Merchants may keep their books in person or have them kept by a person whom they authorize for the purpose.

If the merchant does not personally conduct his books, it shall be presumed that authority has been granted the person who does keep them, unless there is proof to the contrary.

ART. 36. Merchants shall present the books referred to in article 33 bound, ruled, and folioed, to the municipal judge of the district where they have their commercial establishment, in order that he may make on the first folio of each one a signed memorandum of the number contained in the book.

The seal of the municipal court which authenticates them shall, moreover, be stamped on all the sheets of each book.

According to the provisions of the royal order of December 29, 1885, the legalization of commercial books, considering the small amount of work involved, shall be done by the municipal judges without charging any fees therefor.

On the two occasions where *municipal* is used in the article we annotate this word in the same article modified for the Philippines is substituted by *of the peace*.

ART. 37. The book of inventories and balances shall begin with the inventory which must be made by the merchant at the time of commencing business, and shall contain:

1. A minute statement of the money, securities, credits, notes payable, real or personal property, merchandise, and goods of all kinds appraised at their true value, and which constitute his assets.

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2. A true statement of the debts and all kinds of pending obligations, should there be any, and which form his liabilities.

3. He shall fix, if proper, the exact difference between his assets and liabilities, which will be the capital with which to begin business.

Merchants shall, moreover, make annually and enter in the same book the general balances of their transactions, with the details mentioned in this article, and in accordance with the entries in the daybook, without any reservation or omission whatsoever, over their signature and under their liability.

ART. 38. The first entry in the daybook shall consist of the result of the inventory treated of in the foregoing article, divided into one or several consecutive accounts, according to the system of bookkeeping adopted.

There shall thereafter follow, day by day, all their transactions, each entry stating the credit and debit of the respective accounts.

When the transactions are numerous, no matter of what importance they may be, or when they took place outside of the domicile, those referring to each account which have taken place on one day may be included in the same entry, but observing in the statement of the same, when they are detailed, the same order in which they occurred.

There shall be entered in the same manner, on the date on which they are taken from deposit, the amounts which the merchant uses for his domestic expenses, which shall be placed in a special account to be opened in the ledger for this purpose.

See No. 1 of article 888 of this code.

ART. 39. The accounts referring to each object or person in particular shall, moreover, be opened with a credit and debit in the ledger, and the entries referring to these accounts in the daybook shall be transferred to the former in strict order of dates.

ART. 40. In the book of minutes which shall be kept by each association there shall be entered *verbatim* all resolutions adopted at their meetings or at those of their managers, stating the date of each one, the persons who were present at the same, the votes cast, and anything else which will aid in arriving at an exact knowledge of what was decided, being authenticated with the signatures of the managers, directors, or administrators who are in charge of the management of the association or by the persons fixed in the by-laws or the regulations which govern the latter.

ART. 41. All letters which a merchant may write regarding his business and the telegrams he may send shall be transferred to the copying book, either by hand or through any mechanical means, completely and consecutively, by order of dates, including the subscribing clause and signature.

ART. 42. Merchants shall carefully keep in bundles and in proper order the letters and telegraphic messages relating to their transactions which they may receive.

See article 49, which completes the prescriptions of the one we annotate.

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ART. 43. Merchants, besides complying with and fulfilling the conditions and formalities prescribed in this title, must keep their books in a clear manner in order of dates, without intervals, interlineations, erasures, or blots, and without showing traces of having been altered by substituting or tearing out folios, or in any other manner whatsoever.

The supreme court, in an opinion of November 22, 1869, established that entries made in books have no value whatsoever in suits *in favor of the merchant* who presents them, when they appear to contain erasures or corrections in their important part.

ART. 44. Merchants shall correct the errors or omissions which may occur in making entries in the books immediately thereafter, as soon as they notice them, clearly explaining in what they consisted and writing the phrase as it should have appeared.

Should some time have elapsed since the error was committed or since the occurrence of the omission, they shall make the proper entry of correction, adding at the margin of the incorrect entry a memorandum calling attention to the correction.

ART. 45. No official inquiry can be instituted by judges or courts, nor any authority, in order to ascertain if merchants keep their books in accordance with the provisions of this code, nor any general investigation or examination of the bookkeeping in the offices or counting-houses of merchants.

Although articles 45 and 46 of the code of commerce establish, as a general rule, that neither officially by a judge or superior court nor any authority whatsoever can an inquiry be instituted to ascertain if merchants keep their books in accordance with the prescriptions of this code, nor that any investigation or general examination of the bookkeeping in the offices or countinghouses of the same can be made, nor that there can be decreed, at the instance of a party, the communication, delivery, or general inspection of the books, article 47 of this code is an exception to this rule, as it establishes that the exhibition of the books and documents of merchants may be decreed at the instance of a person, or officially, when the person to whom they belong has any interest or liability in the matter in which the exhibition is desired, a legal precept which is in harmony with article 605 of the law of civil procedure, in accord with article 51 and 52 of the old code of commerce, which corresponds to the said article 47 of the code in force, and which can not be considered as violated in this case. (Opinion of March 30, 1894. *Gaceta* of September 13.)

ART. 46. Neither can the general communication, delivery, or inspection of the books, correspondence, and other documents of merchants be decreed at the instance of a party, except in cases of liquidation, universal heirship, or bankruptcy.[1]

ART. 47. With the exception of the cases mentioned in the foregoing article, the exhibition of the books and documents of merchants can only be decreed, at the instance of a party, or officially, when the person requesting it has any interest or liability in the question in which the exhibition is to take place.

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[1] See in the respective appendix the modification suggested for this article in the project of law published in the *Gaceta* of April 27, 1892.

See the addition to the preceding article.

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The inspection shall be made in the counting-house of the merchant, in his presence, or in that of the person he may delegate, and shall be limited exclusively to the points which relate to the matter in question, said points being the only ones which may be verified.

This article is in harmony with article 605 of the law of civil procedure for the Peninsula, 604 of that for Cuba and Porto Rico, and 588 of that for the Philippines.

The exhibition as evidence, which is established by the article we annotate, makes the refusal of a merchant to exhibit his books ordered by a judicial mandate an act of contempt of court, and this code not containing any penalty for such cases of contempt, there must be applied thereto the punishment prescribed by the penal code for said offense. (Opinion of the supreme court of February 6, 1880. *Gaceta* of May 8.)

A commercial association not being found in any of the cases specified in the article we explain, the opinion which exempts the same from a suit instituted in order that it be required to exhibit its books is correctly applied by this article and does not violate article 603 of the law of civil procedure of the Peninsula (602 of that for Cuba and Porto Rico, and 586 of that for the Philippines) because, although it establishes that persons who litigate shall not be required to exhibit private documents of their exclusive property, with the exception of the right of the person who requires them, of which he may make use in the proper suit, said article does not exempt from the unavoidable obligation to justify the right with which the exhibition is demanded, and should no right exist, it can not be demanded. (Opinion of September 26, 1893. *Gaceta* of December 3.)

ART. 48. In order to graduate the weight of evidence of books of merchants, the following rules shall be observed:

1. Books of merchants shall be evidence against themselves, no proof to the contrary being admitted; but the opponent can not accept the entries which are favorable to him and reject those which prejudice him; but, having admitted this means of evidence, he shall be subject to the results which they may conjointly entail, taking into equal consideration all the entries relating to the matter in litigation.

2. If the entries of the books exhibited by two merchants should not conform, and those of one of them have been kept with all the formalities mentioned in this title, and those of the other contain any defects or lack the requisites prescribed by this code, the entries of the books correctly kept shall be admitted against those of the defective ones, unless the contrary is demonstrated by means of other proofs legally admissible.

3. If one of the merchants should not present his books or should state that he does not possess any, those of his adversary, kept with all the legal formalities, shall be evidence against him, unless it is proven that the lack of said books is caused by force majeure, and always reserving the evidence against the entries exhibited, by the other means legally admissible in suits.

4. If the books of the merchants possess all the legal requirements and are contradictory, the judge[1] or superior court shall determine by the rest of the evidence, classifying it according to the general legal rules.

[1] We do not know if on account of an error or as a modification, nothing being said on the subject in the report of the commission, the word *judge* was suppressed in the text of the article modified for the Philippines.

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The supreme court, in an opinion of March 15, 1871, declared that if the books of one party only are kept with the due formalities, they are full proof against the other party if he does not keep them with said formalities.

ART. 49. Merchants and their heirs or successors shall preserve the books, telegrams, and correspondence of their business in general for the entire period which the latter may last, and until five years after the liquidation of all their commercial transactions and business.

Documents which specially relate to certain acts or transactions may be rendered useless or destroyed after the time of the limitation of the actions which could be brought by virtue thereof has elapsed, unless some question referring to the same directly or indirectly is pending, in which case they must be kept until the conclusion thereof.

Limitations of actions are treated of in articles 942 to 954.
The provisions of book 4 of the civil code must also be taken into consideration.

TITLE IV.

GENERAL PROVISIONS RELATING TO COMMERCIAL CONTRACTS.

ART. 50. Commercial contracts in all that relates to their requisites, modifications, exceptions, interpretations, and extinction, and to the capacity of the contractors, shall be governed, in all that is not expressly established in this code or in special laws, by the general rules of common law.

The supreme court declared in an opinion of March 12, 1875, that, although commercial contracts are governed by the common law with relation to the causes which annul or invalidate the same, this general rule is limited by the modifications and restrictions established by the special commercial law; and in another of July 12, 1876, that, although commercial transactions must be decided by the special commercial legislation, and not by the common laws, there is no doubt, also, that in special cases, and in the absence of a specific provision, there may and must be applied to the same the prescriptions of the common law, in accordance with the jurisprudence established by the said court.

ART. 51. Commercial contracts shall be valid and serve as the basis of an obligation and cause of action in suits, whatever may be the form or in whatever foreign language they are executed, the class to which they correspond, and the amount involved, provided their existence is proven by some of the means established by the civil law. However, the declaration of witnesses shall not in itself be sufficient to prove the existence of a contract the consideration of which exceeds 1,500 pesetas if no other evidence is adduced.

Telegraphic correspondence shall only be the basis of an obligation between contracting parties who have previously admitted this medium in a written contract, and provided the telegrams fulfill the conventional conditions or tokens which may have been previously fixed by the contracting parties if they agreed thereto.

The article which we annotate treats only of witness evidence in order to restrain its natural effects in case it is made use of to prove the existence of commercial contracts, the consideration of which exceeds 1,500 pesetas, but it does not establish

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any special standard by which to estimate the probatory value of the declarations of witnesses in suits, but rather refers in this matter to the common law, in declaring that evidence of commercial contracts is to be governed by the provisions of the same, no matter what may be their form, kind, and consideration; and this being the case, it is evident that when such means of evidence is utilized, alone or in conjunction with any other, its value must be appraised in accordance with the prescriptions of article 659 of the law of civil procedure. (Opinion of November 12, 1892. *Gaceta* of December 27.)

The means of evidence established by law and to which the article we annotate refers are those fixed by article 578 of the law of civil procedure for the Peninsula, 577 of that for Cuba and Porto Rico, and 561 of that for the Philippines, which are—

(1) Admission in a suit; (2) public and solemn instruments; (3) private documents and correspondence; (4) the books of merchants which are kept with the formalities of this code; (5) reports of experts; (6) judicial investigations; (7) witnesses.

See also articles 1214 et seq. of the civil code.

ART. 52. There shall be excepted from the provisions of the foregoing article:

1. Contracts which, in accordance with this code or special laws, must be made by an instrument or require methods or necessary formalities for their validity.

2. Contracts executed in a foreign country in which the law requires certain instruments, methods, or formalities for their validity, although not required by the Spanish law.

In either case contracts which do not fulfill the requisites respectively demanded shall not be the basis for any obligation or cause of action in suits.

Commercial contracts for land transportation can not be considered as included in any of the cases prescribed by the article we annotate. (Opinion of the supreme court of September 28, 1889. *Gaceta* of November 12.)

See articles 9 et seq. of the civil code with regard to contracts executed in foreign countries.

ART. 53. Illicit agreements can not be the basis for any obligation or cause of action, notwithstanding that they involve commercial transactions.

An agreement shall be illicit when it is in conflict with law and good morals.

ART. 54. Contracts executed through correspondence shall be completed from the time an answer is made accepting the proposition or the conditions by which the latter may be modified.

ART. 55. Contracts in which an agent or broker mediates shall be completed when the contracting parties shall have agreed to their clauses.

The supreme court of justice, in an opinion of May 10, 1884, establishes as a precedent: That it is not legal for the person who, without objection, authorized with his signature an agreement in which a licensed broker mediated, to take refuge in a supposed error, not corrected at the proper time, which affects the action of the contract and which was committed by the former in drafting the instrument containing said contract, to counteract the force of the same and to oppose the protest of annulment presented by the opposite party.

ART. 56. In a commercial contract containing an indemnification clause against the person who does not comply therewith, the party

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prejudiced may take legal steps to demand the fulfillment of the contract or the indemnification stipulated; but in utilizing one of these two actions the other one shall be annulled unless there is an agreement to the contrary.

ART. 57. Commercial contracts shall be executed and complied with in good faith according to the terms in which they were made and drafted, without evading the honest, proper, and usual signification of written or spoken words with arbitrary interpretations, nor limiting the effects which are naturally derived from the manner in which the contractors may have explained their wishes and contracted their obligations.

Commercial contracts must be fulfilled in accordance with the proper and genuine signification of their words and the manifest intention of the contracting parties. (Opinion of July 18, 1867.)

What has been stipulated and agreed upon is the supreme law of contracts and for their interpretation and honest understanding when any doubt arises regarding the same, besides considering the words in their strict acceptance, their spirit must be considered, deducing the real intention of the contracting parties by the statement of the clauses which they contain, that they have been agreed upon by the very acts of the person subsequent to the contract, when they relate to what is in dispute. (Opinions of March 28, 1867, November 16, 1870, February 23, 1871, and November 9, 1887.)

When the clauses of a contract are clear and explicit, there is no necessity to have recourse to the rules for interpretation. (Opinions of April 11, June 19, 1865, and March 1, 1862.)

When it is not possible to deduce the intention of the contracting parties, the obscure clauses must be interpreted against the persons who expressed them. (Opinion of December 28, 1864.)

ART. 58. Should there appear any difference between the copies of a contract presented by the contracting parties and an agent or broker mediated in the execution thereof, what appears in the books of the latter shall be accepted as conclusive, provided they are kept in accordance with law.

ART. 59. Should any doubts arise which can not be decided in accordance with the provisions of article 2 of this code, the question shall be decided in favor of the debtor.

ART. 60. In all computations of days, months, and years, there shall be understood: A day shall comprise twenty-four hours; the months according to the manner they are designated in the Gregorian calendar, and a year shall embrace three hundred and sixty-five days.

Bills of exchange, promissory notes, and loans are excepted, with relation to which the special provisions established by this code shall be observed.

See articles 62 and 453 et seq. of this code.

ART. 61. Days of grace, courtesy, and others, which under any appellation whatsoever defer the fulfillment of commercial obligations, shall not be recognized, but only those which the parties may have previously fixed in the contract, or which are founded on a definite provision of law.

See article 942 of this code.

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ART. 62. Obligations which do not have a limit previously fixed by the parties, or by the provisions of this code, shall be demandable ten days after having been contracted, if they can only be the basis for an ordinary action, and on the next day if an execution lies.

Articles 1429 of the law of civil procedure for the Peninsula, 1427 of that for Cuba and Puerto Rico, and 1411 of that for the Philippines, declare the deeds in which executions lie.

ART. 63. The effects of tardiness in the compliance with commercial obligations shall begin:

1. In contracts in which a day is fixed for their compliance by the will of the parties or by law, on the day following the one they fall due.

2. In contracts in which no such day is fixed, from the day on which the creditor legally summons the debtor or makes known to him the declaration of loss and damage made against him before a justice, notary, or other public official authorized to admit the same.

According to a declaration made by the supreme court in an opinion of September 15, 1871, a creditor can not be declared tardy who was not cited for the board of investigation of credits, although he shall not be prejudiced if his name is not included in the list of debts.

TITLE V.

PLACES AND BUILDINGS FOR COMMERCIAL TRANSACTIONS.

SECTION FIRST.

Commercial exchanges.[1]

ART. 64. Legally authorized public establishments in which merchants and licensed intermediary agents usually assemble to agree upon or carry out the commercial transactions mentioned in this section shall be called commercial exchanges.

ART. 65. The government may establish or authorize the creation of commercial exchanges wherever it may deem it convenient.

Associations established in accordance with this code may also create them, provided the faculty of doing so is one of their ends.

Notwithstanding this, in order that the quotations of transactions effected and published in this kind of exchanges may have an official character, it shall be necessary for the Government to authorize said transactions before being the subject of the public traffic, shown by the quotation.

The Government may grant said authorization, after procuring the information which it may consider necessary regarding its public convenience.

See the note to the second section of this title, and articles 1, 2, 3, and 4 of the exchange regulations cited in the note to the heading of this title.

Consult, also, article 81 of this code.

[1] The first chapter of the provisional regulations for the organization and government of commercial exchanges of December 31, 1885, is a complement to this section.

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ART. 66. Existing commercial exchanges, as well as those newly created, shall be governed by the prescriptions of this code.

ART. 67. The following shall be the subject of transactions on exchange:

1. Public bonds and securities.
2. Industrial and commercial securities issued by private parties or associations or enterprises legally constituted.
3. Bills of exchange, drafts, promissory notes, and any other commercial paper.
4. The sale of precious metals, in coin or bullion.
5. Merchandise of all kinds and warehouse receipts.
6. The insurance of commercial effects against land or marine risks.
7. Transportation and freightage, bills of lading, and freight.
8. Any other transactions similar to those mentioned in the foregoing numbers, provided they are lawful.

The bonds and securities referred to in numbers 1 and 2 of this article shall only be included in the official quotations when their negotiation is authorized, in accordance with article 65, in the exchanges of private constitution, or which are declared negotiable on the exchanges officially established.

The law of exchanges, however, does not oppose that the interest of public instruments be negotiated outside of the establishment, in accordance with the general prescriptions of law. (Opinion of July 12, 1886.)

See article 28 and number 2 of article 48 of the exchange regulations.

ART. 68. In order to include them in the official quotations treated of in the foregoing article, under the appellation of public securities shall be understood:

1. Those which by means of an issue represent credits against the State, provinces, or municipalities, and are legally recognized as negotiable on exchange.
2. Those issued by foreign nations, if their negotiation has been duly authorized [1] by the government after a report of the board of directors of the association of money brokers.

(See articles 28 to 35 of the exchange regulations now in force.)

ART. 69. There may also be included in the official quotations, as a matter of traffic on exchange, instruments of credit payable to bearer issued by national establishments, companies, or enterprises in accordance with law and the statutes of the same, provided that the resolution for their issue, with all the other requisites enumerated in article 21, are duly recorded in the commercial registry, as well as in those of property, when, on account of their nature, this should be done, and provided that these details have been previously reported to the board of directors of the association of money brokers.

ART. 70. In order to include in the official quotations as a matter of traffic on exchange, credit instruments payable to bearer of foreign enterprises established in accordance with the laws of the State in

[1] In the text of the same article as modified for the Philippines the word *duly* does not appear.

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which said enterprises are situated, the previous authorization of the board of directors of the association of money brokers shall be necessary, after it has been proved that the issue has been made in accordance with law and with the statutes of the company which issues the same, and that all the requisites prescribed in the said provisions have been complied with, and provided there exist no reasons of public interest which may make them objectionable.

ART. 71. Instruments or securities issued by private parties can not be included in the official quotations without the authority of the board of directors of the association of money brokers, which shall always be granted when they are mortgage bonds or are sufficiently guaranteed in their judgment and under their liability.

This article regulates, so to say, the prescriptions of number 2 of article 67 of the present code.

See articles 28, 29, 31 et seq. of the exchange regulations.

ART. 72. The following can not be included in the official quotations:

1. Instruments or securities issued by companies or copartnerships not recorded in the commercial registry.

2. Instruments or securities issued by associations which, although recorded in the commercial registry, have not made the issue in accordance with this code or with special laws.

ART. 73. The regulations shall fix the days and hours on which the meetings of the exchanges established by the Government or by private parties are to be held, after they have acquired an official character, and all that relates to their local government and police, which shall in each one of them be in charge of the board of directors of the association of money brokers. The Government shall fix the schedule of the fees of the brokers.

Articles 23 et seq. of the exchange regulations treat of the meetings of exchanges, and articles 68 to 71 of the fees of commercial agents.

SECOND SECTION.

Transactions on exchange.[1]

[1] According to the doctrine established by the supreme court, in an opinion of November 22, 1881, instruments payable to bearer issued by the state, corporations or companies authorized therefor, are not subject to restitution, provided that, with the legal formalities, they have been negotiated on exchange where there is one, and where there is none that a notary public or money broker took part in the transaction; which demonstrates that the provision to the effect that said documents must be negotiated on exchange, so that they can not be recovered, does not signify that the transactions must take place *in the building* of the exchange, but that they shall take place through the agent or public official determined by law, and with the other legal facilities which are to guarantee the same and give them the formality and character of exchange transactions.

The said court stated on the same question, in an opinion of February 24, 1872, that the object of the exchange law of February 8, 1854, was to facilitate and guarantee transactions made on exchange, but that it does not oppose in any manner whatsoever that holders of public documents negotiate the same outside of said establishment, and in the manner they may consider convenient, as is stated in its article 9; and another of March 21, 1862, establishes: That the royal decree of February 8, 1854, referring to exchange transactions, can not be applied to regulate the contracts executed in a place where no exchange has been established; but by article 9 of the same, and by the common laws, sale and resale contracts on time may be executed and be valid, although said royal decree be not applicable to them, and which can not even be considered as violated by the same. This doctrine was confirmed by another opinion of June 12, 1886.

With regard to the stamp tax to which the exchange policies in general are subject, see articles 21 to 24 of the law in force on said tax of September 15, 1892. (*Gaceta* of October 1.)

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ART. 74. Every person, be he a merchant or not, may make contracts relating to public instruments, or industrial or commercial securities, without the intervention of a licensed money broker; but said contracts shall have no more value than arises from their form and which is granted them by the common law.

The memoranda of sales issued in exchange transactions, for cash as well as on time, in accordance with the prescriptions of this article, which take place without the intervention of an agent or broker, must be issued with a stamp of twenty pesetas, no matter what may be the value of the paper transferred. (Article 24 of the stamp law of September 15, 1892.)

ART. 75. Transactions which take place on exchange shall be complied with under the conditions and in the manner and form agreed upon by the contracting parties, and can be either for cash or on time, definite or optional, with or without brokerage, stating at the time of announcing the same the conditions which may have been stipulated in each transaction.

All these transactions may be binding and the basis of actions before courts.

With regard to the jurisprudence on this question, the opinion of February 7, 1885, is noteworthy, which states: That transactions on exchange having taken place through an agent, without the formalities which are necessary for those called for cash, the transaction loses the character of an exchange transaction for cash, and is converted into a private debt; and also the doctrine laid down by the supreme court in several opinions to the effect that transactions on time relating to the sale and resale of public instruments require as an indispensable condition in order to be binding, that they be made through agents, that the deeds which are the object of the transaction are in the possession of the vendor, that they are published on exchange and viséd by the board of directors, without which requisites they shall be considered fraudulent and punishable. (Opinion of October 16, 1889.)

Exchange transactions involving the allowance of differences are prohibited by law and can not be the basis for any sound legal action. (Opinions of May 16, 1888, and February 22, 1889.)

Transactions on time relating to the sale and resale of public instruments require as an indispensable condition in order to be binding that they take place through agents; that the papers which are the subject of the contract are in possession of the vendor, and that they be published on exchange and viséd by their board of directors, without which requisites they shall be considered fraudulent and punishable. (Opinion of October 16, 1889.)

ART. 76. Transactions for cash made on exchange must be consummated on the same day of their execution, or at the utmost, in the time intervening until the next meeting of the exchange.

The seller shall be under the obligation to deliver, without further delay, the instruments or securities sold and the purchaser to receive them, satisfying their price immediately.

Transactions on time and conditional ones shall be consummated in the same manner at the time agreed upon.

ART. 77. If the transactions take place through a licensed money broker, the latter being silent regarding the name of the principal, or between agents with the same conditions, and the licensed agent, vendor, or purchaser delays the fulfillment of the agreement, the per-

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son prejudiced by the delay may choose in the exchange itself between abandoning the contract, denouncing it to the board of directors, or demanding the compliance of the same.

In the latter case it shall be consummated through one of the members of the board of directors by purchasing or selling the public instruments agreed upon for account and risk of the tardy agent, without prejudice to the suit of the latter against the principal.

The board of directors shall order the realization of that part of the bond of the tardy agent necessary to immediately satisfy these differences.

In transactions involving industrial and commercial instruments, metals, or merchandise, the person who delays or refuses to consummate a contract shall be compelled to comply therewith by means of the actions which may be proper according to the prescriptions of this code.

See articles 43 and 63 of the exchange regulations.

ART. 78. Whenever any transaction which can be quoted has been agreed upon, the money broker who may have taken part therein shall make a signed memorandum thereof, delivering it immediately to the announcer, who, after reading it aloud, shall transmit it to the board of directors.

See article 167 of the regulations for property rights.

ART. 79. The transactions which take place through a licensed broker, involving bonds or public instruments, shall be announced aloud immediately upon being agreed upon, without prejudice to transmitting the proper memorandum to the board of directors.

Other contracts shall be made known in the quotation bulletin, stating the maximum and minimum price of the purchases of merchandise, transportation and freightage, the rate of discount, and that of the exchanges for drafts and loans.

See article 38 of the commercial exchange regulations of December 31, 1885.

ART. 80. The boards of directors shall meet after the exchange hours, and in view of the negotiations of public instruments which result from the memoranda delivered by the licensed brokers, and with the notice of the sales and other operations in which the same took part, it shall prepare the list of quotations, transmitting a certified copy thereof to the commercial registry.

See articles 48, 49, and 50 of the exchange regulations, and 31 of this code, and 16 et seq. of the commercial registry regulations.

SECTION THIRD.

Other public places for transactions—Fairs, markets, and shops.

ART. 81. The Government, as well as commercial associations which fulfill the conditions mentioned in article 65 of this code, may establish exchanges or commercial agencies.

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ART. 82. The competent authority shall announce the place and time of holding fairs and the police regulations which are to be observed in the same.

According to numbers 1 and 2 of article 72 of the municipal law in force in the Peninsula, the details referred to in the present article are of the exclusive jurisdiction of the town councils, and the general government can only interfere when fears are entertained that the decisions which may be adopted may cause some disturbance of public order. (Decision of July 8, 1878.)

ART. 82. (Philippines.) (See the addition which follows):

In this article and the two following ones there are added, according to the modifications made for the Philippine Islands, the words *annual feast* or *feasts* immediately after *fair* or *fairs*, and the word *municipal* is substituted by *of the peace*.

ART. 83. Sale and resale contracts executed at fairs may be for cash or on time; the former must be complied with on the same day of their execution, or, at the utmost, within the following twenty-four hours.

After this time has elapsed without either of the contracting parties having demanded its compliance, they shall be considered null, and the deposits or earnest money which may have been delivered shall be forfeited to the person who received the same.

ART. 83. (Philippines.) (See the addition to the foregoing article.)

ART. 84. Questions which may arise at fairs regarding contracts executed at the same shall be decided in an oral trial by the municipal judge of the town in which the fair is held, in accordance with the prescriptions of this code, provided the value of the article in litigation does not exceed 1,500 pesetas.

Should there be more than one municipal judge, the one selected by the plaintiff shall be the one of competent jurisdiction.

With regard to the fees which may be collected by judges with relation to their intervention in the questions referred to in the present article, the royal order of December 29, 1885, provided that the provisions of article 19 and 20 of the judicial tariffs in force be observed, which fix 2 pesetas as fees for all decisions, acts, and work in an oral trial, including the judgment, provided it does not exceed one hour, and 2 more pesetas for every hour in addition, the same amount being paid when the defendant having been cited, the trial is not held on account of the nonappearance of the plaintiff or of both.

ART. 84. (Philippines.) (See the addition to article 82.)

ART. 85. The purchase of merchandise from warehouses or shops open to the public shall cause the forfeiture of the right in favor of the purchaser with regard to the merchandise acquired, reserving in a proper case the rights of the owner of the merchandise sold to institute the civil or criminal actions which may be proper against the person who sold the same without having a right to do so.

For the purposes of this forfeiture, as warehouses or shops open to the public shall be considered:

1. Those which may be established by recorded merchants.

2. Those established by merchants who are not recorded, provided the warehouses or shops remain open to the public for a period of eight

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consecutive days, or that they have been announced by means of signs, cards, or posters in the places themselves, or through circulars distributed to the public or inserted in the newspapers of the locality.

ART. 86. The money in which the payment of merchandise bought for cash is effected, in shops or public establishments, shall not be recoverable.

ART. 87. Purchases and sales which take place in establishments shall always be presumed as made for cash unless there is proof to the contrary.

TITLE VI.

COMMERCIAL AGENTS AND THEIR RESPECTIVE OBLIGATIONS.

SECTION FIRST.

General provisions common to commercial agents.

ART. 88. The following shall be subject to the commercial laws as commercial agents:

Money and stock brokers.

Commercial brokers.

Ship-broking interpreters.

With regard to the qualifications required of commercial agents, see articles 94 and 112 of this code; and with regard to their capacity to trade, article 14, No. 5, of the same, and article 96.

ART. 89. The services of stock brokers or agents, no matter what may be their class, may be rendered by Spaniards and foreigners; but licensed agents and brokers only may issue certifications.

The means of proving the existence and conditions of instruments or contracts in which agents who are not licensed take part shall be those established by the commercial or common law to justify obligations.

See Chapter II of the exchange regulations in force (articles 10 to 22).

ART. 90. In every commercial center there may be established an association of stock brokers, another of commercial brokers, and in maritime centers one of ship-broking interpreters.

ART. 91. The associations treated of in the foregoing article shall be composed of the individuals who may have obtained the proper certificate of possessing the qualifications required by this code.

ART. 92. At the head of each association there shall be a board of directors elected by the members.

ART. 93. The licensed agents shall have the character of notaries in all that refers to the negotiation of public instruments, industrial and commercial securities, merchandise, and the other commercial acts included in their office in the respective center.

They shall keep a registry book in accordance with the prescriptions of article 36, entering therein in proper order, separately and daily, all

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the transactions in which they may have taken part, being moreover permitted to keep other books with the same formalities.

The books and policies of licensed agents shall be admitted as evidence in suits.

See article 58 of the present code and 596, No. 2, of the law of civil procedure now in force.

In order that the books and policies of agents may have an official character and be admitted as evidence in suits, it is necessary that the acts and transactions which have been effected through money brokers have taken place with an official character. (Opinion of January 26, 1889.)

The stamp law in force of September 15, 1892, prescribes that the registry books which by virtue of the provisions of the second paragraph of the article we annotate must be kept by licensed money and stock brokers, as well as any other ones they may desire to keep with the same formalities, shall be subject to the same tax as the books of merchants. (See the addition to article 33 of this code.)

With regard to the tax to which contracts of transfer of public instruments, industrial and commercial securities, and merchandise, in which commercial agents take part, referred to in this article, are subject, see the first clause of Letter E and the second one of the law for the modification of the tax on property rights, numbers 5 and 6 of article 1, and article 2 of the law on said tax of September 25, 1892, and articles 3, number 5, 16, 18, 36, 55, rule 3, 72, 117, number 4, and 125, number 10, of the regulations of the same date.

ART. 94. In order to become a member of any of the associations referred to in article 90, it shall be necessary—

1. To be a Spaniard or a naturalized foreigner.
2. To have capacity to trade in accordance with this code.
3. Not to be suffering any correctional or punitive penalty.
4. To prove good moral conduct and well-known honesty by means of a judicial report of three recorded merchants.
5. To constitute in the depository or in its branches, or in the Bank of Spain (Banco de España), the bond fixed by the Government.[1]
6. To obtain from the secretary of public works (*fomento*) the proper certificate, after hearing the board of directors of the respective association.[1]

With regard to the reference to naturalization and capacity to trade in question, see articles 17 to 25 and articles 4, 5, 6, 11, 13, and 14 of the civil code in force; and with reference to the constitution of the bonds treated of in number 5, see articles 61 et seq. of the provisional regulations for the organization and government of commercial exchanges of December 31, 1885.

ART. 94. (Cuba and Porto Rico.) (See the note to the foregoing text.)

ART. 94. (Philippines.) In order to become a member of any of the associations referred to in article 90, it shall be necessary—

1. To be a Spaniard or a naturalized foreigner.
2. To have capacity to trade in accordance with this code.
3. Not to be suffering any correctional or punitive penalty.

[1] Although it is not stated in the modification, we understand that for Cuba and Porto Rico the depositories and banks of those islands must be referred to, and that the words *secretary of public works* (fomento) should be substituted by *Governor-General*.

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4. To prove good moral conduct and well known honesty by means of a judicial report of three recorded merchants.

5. To constitute in the depository or in the *Spanish Philippine Bank*, (Banco Español Filipino) the bond fixed by the Government.

6. *To obtain from the Governor-General, after a report from the board of directors, the provisional certificate, which shall be presented in the colonial department for the royal confirmation, which must be issued free of charge within the period of six months from the date on which it was executed.*

ART. 95. It shall be the obligation of licensed agents:

1. To assure themselves of the identity and legal capacity to trade of the persons in whose affairs they act, and, if proper, of the legitimacy of the signatures of the contracting parties.

When the latter do not have the free disposition of their property, agents can not act without previously obtaining the authorization prescribed by law.

2. To submit the transactions with exactness, precision, and clearness, abstaining from making suppositions which might lead the contracting parties into error.

3. To preserve secrecy in all that refers to the business they may transact and not reveal the names of the persons who intrust the same to them, unless it is otherwise required by law, or by the character of the transactions, or if the persons interested consent to their names being made public.

4. To issue at the expense of the persons interested, who may request them, certificates of the respective entries of their contracts.

ART. 96. Licensed agents can not—

1. Trade for their own account.

2. Constitute themselves underwriters of commercial risks.

3. Negotiate securities or merchandise for the account of individuals or associations which have suspended payments, or which have been declared in bankruptcy or insolvent, unless they have obtained their discharge.

4. Acquire for themselves the effects the negotiation of which was intrusted to them, except in case the agent is to answer for noncompliance of the purchaser to the vendor.

5. Issue certifications which do not directly refer to facts which appear in the entries on their books.

6. Discharge the duties of cashiers, bookkeepers, or employees of any merchant or commercial establishment.

With regard to their liability for the infraction of the provisions of this article, see article 22 of the exchange regulations now in force, to which we have been referring.

ART. 97. The persons violating the provisions of the preceding article shall be removed from their office by the Government, after hearing the board of directors and the interested party, who may

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appeal from this decision through administrative litigation (*via contenciosa administrativa*).

They shall, moreover, be civilly liable for the damage caused by any neglect of the obligations of their office.

With regard to the provisions contained in this paragraph the supreme court established in an opinion of December 3, 1870, that the agent who takes part in a transaction in order to authorize the respective certificate is not civilly liable for the consequences of any fraud perpetrated by the vendor of any deeds, if the latter contracted directly with said vendor.

ART. 98. The bonds of stock brokers, commercial brokers, and ship-broking interpreters shall be specially liable for the results of the business of their office, the persons prejudiced having a right of preferred real action against the same without prejudice to any others which may be proper according to law.

This bond can not be restored, notwithstanding that the agent ceases in the discharge of his office, until the period fixed in article 946 has elapsed, unless a claim has been filed within the same period.

The bond shall only be subject to liabilities not connected with the office when those of the latter are first fully secured.

If the bond is divided by the liabilities to which it is subject, or its real value is diminished for any reason whatsoever, it must be replaced by the agent within the period of twenty days.

See articles 62 and 63 of the exchange regulations in force and 946 of this code.

ART. 99. In case of disability, incapacity, or suspension from office of stock brokers, commercial brokers, or ship-broking interpreters the books which they are to keep in accordance with this code shall be deposited in the commercial registry.

See articles 16 and 17 of the commercial registry regulations and No. 17 of the schedule of fees of commercial registers.

SECTION SECOND.

Licensed money and stock brokers.

ART. 100. Money and stock brokers shall be authorized to:

1. Take part privately in negotiations and transfers of all kinds of public instruments or securities which can be quoted, defined in article 68.

2. Take part, in concurrence with commercial agents, in all other exchange transactions and contracts, subject to the liabilities appertaining to these transactions.

Article 22 of the exchange regulation states the penalties which shall be incurred by agents who take part in other transactions than those for which they are authorized by the article we annotate.

ART. 101. Stock agents who take part in purchase or sale contracts or in other transactions for cash or on time shall be liable to the purchaser for the delivery of the instruments or securities involved in said

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transactions and to the vendor for the payment of the price or indemnity agreed upon.

See article 37 of the exchange regulations.

The liability established by this article is limited to three years, in accordance with the provisions of article 945 of this code.

ART. 102. Stock brokers shall enter in their books, in correlative numerical order and by dates, all the transactions in which they take part.

With reference to the books which they are to keep, in our judgment, articles 93 and 114 of this code offer a clear and definite explanation, the first one establishing as obligatory the registry book only, and making it optional to keep other books or not, and the second, in referring to ship-broking interpreters, prescribes that they are to keep a book of translations, a register of the names of captains, etc., and a day-book of the charters in which they take part. With regard to the manner of keeping these books and the persons who are to do so, see the second paragraph of article 19 and article 20 of the exchange regulations now in force.

ART. 103. Stockbrokers shall deliver to each other a signed memorandum of every transaction agreed upon, on the same day on which it took place. Another memorandum, signed in the same manner, shall be delivered to their constituents, and the latter shall deliver one to the agents, stating their acquiescence with the terms and conditions of the transaction.

The memoranda or policies which agents deliver to their constituents, and those which they mutually issue, shall be evidence against the agent who subscribes them in all cases of claims which may arise by virtue thereof.

In order to determine the net amount which can be claimed, the board of directors shall issue a certificate stating the difference in cash which appears against the constituents in view of the memoranda of the transaction.

The acquiescence of the constituents, after their signature has been acknowledged in a suit, shall include an execution, provided the certificate of the board of directors mentioned in the preceding paragraph is presented.

This is in harmony with the provisions of the sixth case of article 1429 of the law of civil procedure for the Peninsula, 1427 of that for Cuba and Porto Rico, and 1411 of that for the Philippines.

ART. 104. Stock agents, besides the obligations common to all agents enumerated in articles 95, 96, 97, and 98, shall be civilly liable for the industrial or commercial instruments or securities which they may sell after the denunciation of said securities as illegitimate has been made public by the board of directors.

Articles 56 and 59 of the exchange regulations in force and articles 559 to 565 of this code complete and explain this article.

ART. 105. The president, or the person acting in his stead, and two members at least of the board of directors shall always be present at the meeting of the exchange in order to decide what may be proper in the cases which may arise.

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The board of directors shall fix the rate of the monthly liquidations in closing the exchange on the last day of each month, taking as a basis the average of the quotations of the same day.

The same board shall be in charge of receiving the partial liquidations and preparing the general one of the month.

Articles 54 and 55 of the exchange regulations in force complete and explain this article.

Taking into consideration the provisions of this article, and in order that the provisions of articles 76, 93, and 102 of this code may be exactly complied with, it was prescribed by the royal order of April 12, 1892 (*Gaceta* of the 14th), that instruments payable to bearer which are delivered in consummating transactions on time and in full payment of the same corresponding to the liquidations of April, 1892, and succeeding months, should have attached, like the transactions for cash, an invoice subscribed by the vendor, stating its class, series, and number, authorizing at the same time the board of directors of the Association of Money and Stock Brokers of Madrid to adopt the form of invoice of delivery of paper, which must always be done through a stock agent, and also all the measures which it may consider convenient on the subject in order that the general liquidation be not interrupted.

SECTION THIRD.

Licensed commercial brokers.

ART. 106. Besides the obligations common to all commercial agents enumerated in article 95, licensed commercial brokers shall be under the obligation:

1. To answer legally for the authenticity of the signature of the last conveyer in negotiations of bills of exchange and other negotiable paper.

2. To take part and certify, in contracts of purchase and sale, to the delivery of the paper and to its payment, if the persons interested demand it.

3. To collect from the conveyer and deliver to the buyer the drafts or negotiable paper which may have been negotiated through him.

4. To collect from the buyer and deliver to the conveyer the value of the bills of exchange or negotiable paper which is negotiated.

ART. 107. Licensed brokers shall enter in their books in separate entries all the transactions in which they may have taken part, stating the names and the domiciles of the contracting parties and the subject and conditions of the contracts.

In sales they shall state the quality, amount, and price of the article sold, place and date of the delivery, and the manner in which the price is to be paid.

In negotiations of bills of exchange, they shall enter the dates, places of issue and payment, terms and due dates, names of the drawer, endorser and payer, those of the conveyer and purchaser, and the exchange agreed upon.

In insurance there shall be stated, with reference to the policy, besides the number and date of the same, the names of the under-

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writer and of the insured, object of the insurance, its value according to the contracting parties, the premium agreed upon, and, in a proper case, the place of loading and unloading, and a precise and exact statement of the ship or of the means of transportation.

According to the stamp law in force of September 12, 1892, the entry books of licensed commercial brokers referred to in the article we annotate shall be subject to the same payment as the books of merchants. (See the note to article 33 of this code.)

ART. 108. Within the day on which the contract is executed, the licensed brokers shall deliver to each one of the contracting parties a signed memorandum containing all that the latter may have agreed to.

ART. 109. In cases in which, on account of the convenience of the parties, a written contract is executed, the broker shall certify at the foot of the duplicates and shall keep the originals.

ART. 110. Licensed brokers may, in concurrence with the ship-broking interpreters, discharge the duties of the latter, subjecting themselves to the prescriptions of the following section of this title.

See article 113.

ART. 111. The association of brokers, where there is not one of agents, shall issue on each day of negotiation a memorandum of the current exchanges and of the prices of merchandise, for which purpose two members of the board of directors shall be present at the meeting of the exchange, a certified copy of said memorandum being transmitted to the commercial registry.

In order to better understand the contents of the article we annotate, take into consideration the contents of article 100, as well as articles 68 and 113 of this code, and articles 14, 15, and 49 of the exchange regulations.

SECTION FOURTH.

Licensed ship-broking interpreters.

ART. 112. In order to discharge the duties of ship-broking interpreter, besides possessing the qualifications required of agents in article 94, it shall be necessary to prove, either by examination or by a certificate of a public establishment, the knowledge of two modern foreign languages.

By a royal order of September 20, 1891, for the purposes of harmonizing the precepts of articles 112 and 113, which we annotate, with article 51 of the customs regulations, it was decided that ship-broking interpreters can only authenticate the translation of documents written in languages with which they are acquainted, be they either the ones they proved their acquaintance with when they received their certificate or any other ones they may have later acquired; and that when documents are in question, written in a language with which they are not acquainted, the custom-house officials may employ other interpreters to translate the same.

ART. 113. The obligations of ship broking interpreters shall be—

1. To take part in charter contracts, marine insurance, and bottomry bonds, when requested to do so.

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2. To assist captains and supercargoes of foreign vessels and serve as interpreters in the declarations, protests, and other business which may take place in courts and public offices.

3. To translate the documents that the said foreign captains and supercargoes are obliged to present in the said offices, provided there arises any doubt regarding their understanding, certifying that the translations have been well and faithfully made.

4. To represent the same in suits when they, the shipowner or consignee of the vessel, do not appear.

With regard to the prescriptions of number 1, see articles 580, number 9; 583 and 611, number 4; 617, 621, and 719 et seq. of this code; and also the addition to article 112 on account of the relation it bears to number 3.

This article is in accord with article 50 of the customs regulations now in force, which were modified by a royal order of September 20, 1891 (see the addition to the preceding article), in order to harmonize it with the provisions of this code. (Royal order of December 12, 1891. *Gaceta* of February 12, 1892.)

ART. 114. It shall furthermore be the obligation of ship-broking interpreters to keep:

1. A copying book for the translations they may make, entering the same literally.

2. A registry of the names of the captains to whom they render the services proper to their office, stating the flag, name, class, and tonnage of the vessels and the ports of departure and their destination.

3. A daybook of the contracts of charter in which they take part, stating in each entry the name of the vessel, its flag, register, and tonnage; those of the captain and of the charterer; value and destination of the cargo; money in which it is to be paid; advances on the same, should there be any; the goods of which the cargo consists; conditions agreed upon between the charterer and captain regarding demurrage, and the date previously fixed on which to commence and finish loading.

ART. 115. The ship-broking interpreter shall keep one copy of the contract or contracts which may have been executed between the captain and the charterer.

BOOK SECOND.—SPECIAL COMMERCIAL CONTRACTS.

TITLE I.

COMMERCIAL ASSOCIATIONS.

SECTION FIRST.

Manner of establishing associations and their kinds.

ART. 116. Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what its class may be, provided it has been established in accordance with the provisions of this code.

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After a commercial association has been established, it shall have legal representation in all its acts and contracts.

As prescribed by the laws of civil procedure of the Peninsula, as well as of Cuba and Porto Rico, in article 66, the domicile of associations, civil as well as commercial, shall be the town designated as such in the articles of copartnership or of incorporation or in the regulations governing them; if this does not appear, the provisions relating to merchants shall be observed, whose legal domicile is, according to article 55 of the said law, the town where they have the principal office for their commercial transactions; the persons having commercial establishments under their charge in different judicial subdistricts being subject to personal actions in the town where they have the principal establishment or in the town they have obligated themselves, at the option of the plaintiff.

According to the provisions of the first article cited there are excepted from the rules laid down copartnerships with relation to litigation which may be instituted between the partners, the general provisions of the said laws being observed with regard to the same.

The provisions of article 50 of said law amended for the Philippines are identical.

ART. 117. Articles of association, executed with the essential requisites of law, shall be valid and binding between the parties thereto, no matter what form, conditions, and combinations, legal and honest, are embraced therein, provided they are not expressly prohibited by this code.

The establishment of land, agricultural, issue, and discount banks, of loan and mortgage loan associations, of concessionnaires of public works, manufacturing, general warehouses, of mines, of the establishment of principals and life annuities, of insurance and other associations, the purpose of which is any industrial or commercial enterprise, shall be unrestricted.

See article 179, the provisions of which limit the prescriptions of the above in so far as the issue of bank notes is concerned.

Notwithstanding the obligation of recording in the commercial registry the articles of association, the agreements of this class which combine the essential requisites of law shall be valid and binding between the parties thereto, no matter what their form may be. (Opinion of November 10, 1890.)

ART. 118. Contracts executed between commercial associations and any other persons capable of binding themselves shall be valid and binding, provided the same are legal and honest, and that the requisites mentioned in the following article have been complied with.

ART. 119. Every commercial association before beginning business shall be obliged to record its establishment, agreements, and conditions in a public instrument, which shall be presented for record in the commercial registry, in accordance with the provisions of article 17.

Additional instruments which modify or alter in any manner whatsoever the original contracts of the association are subject to the same formalities, in accordance with the provisions of article 25.

Partners can not make private agreements, but all must appear in the articles of copartnership.

The following should be cited as important jurisprudence with regard to this point: Even though an association has some error in its establishment, it shall always be binding in favor of third persons, if it has acted as such. (Opinion of January 10, 1882.)

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Although all articles establishing commercial associations must be recorded in the public registry of the capital of the province, the legal effect of the omission shall be the loss of the rights of action which may have been acquired thereby, but not by third persons who may have executed contracts with the association. (Opinion of January 25, 1888.)

Commercial associations do not have the right to institute suits until their articles of association have been recorded. (Opinion of May 14, 1884.)

The amendments to articles of association do not affect the employees of the association who entered the same before the amendment and who are entitled to the salary offered them when they entered upon their services. (Opinion of December 31, 1889.)

See article 223 of this code.

ART. 120. The persons in charge of the management of the association who do not comply with the provisions of the foregoing article shall be responsible together with the persons not members of the association with whom they may have transacted business in the name of the same.

ART. 121. Commercial associations shall be governed by the clauses and conditions of their articles, and in all that is not determined and prescribed therein, by the provisions of this code.

See articles 16, 17, and 21, articles 116 et seq. of this section, and in general in the following sections of this title, those relating to the formalities which associations are to observe in their establishment and transactions.

ART. 122. As a general rule commercial associations shall be established by the adoption of any of the following forms:

1. The regular general copartnership in which all the partners, under a collective and commercial name, bind themselves to participate, in the proportion which may be established, in the same rights and obligations.

2. The limited copartnership to which one or more persons contribute a specific amount of capital to a common fund, in order to be liable for the social transactions executed exclusively by others under a collective name.

3. The corporation, in which the members form the common fund by means of specific parts or portions, represented by shares or in any other unquestionable manner, leaving its management to removable managers or administrators, who represent the company under an appropriate denomination according to the purpose or undertaking the funds are destined to.

ART. 123. Commercial associations may be, according to the character of their operations—

Loan associations.

Banks of issue and discount.

Mortgage loan associations.

Mining associations.

Agricultural banks.

Concessionaires of railroads, tramways, and public works.

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General warehouse companies.

And of other kinds, provided their agreements are legal, and industry or commerce is their object.

The provisions of the latter part of this article are not violated when, by reason of the stipulations and by subsequent acts, it is reasoned in an opinion that there was no social agreement, but a lease of services. (Opinion of November 10, 1890.)

See article 117 of this code.

ART. 124. Mutual fire insurance companies, companies of tontine life combinations for help in old age, and companies of any other class, as well as cooperative companies of production, loan, or consumption, shall only be considered commercial, and shall be subject to the provisions of this code when they are engaged in commercial transactions which are not mutual or when they are converted into associations charging a fixed premium.

By an order of the Regent of the Kingdom of June 26, 1870, confirmed by a royal order of March 10, 1885, it was ordered that the documents referred to in article 3 of the law of October 19, 1879, be inserted gratuitously in the *Gaceta* and official bulletins, in so far as they refer to cooperative associations, the basis of which are personal services, or the capital of which does not exceed 10,000 pesetas, for which purpose the latter shall be obliged to forward their regulations to the Secretary of Government, through the governors of the provinces.

SECTION SECOND.

General copartnerships.

ART. 125. The articles of general copartnership must state:

The names, surnames, and domiciles of the partners.

The firm name.

The names and surnames of the partners to whom the management of the firm and the use of its signature is intrusted.

The capital which each partner contributes in cash, credits, or property, stating the value given the latter or the basis on which their appraisement is to be made.

The duration of the copartnership.

The amounts which, in a proper case, are to be given to each managing partner annually for his private expenses.

There may be also included in the articles the other legal agreements and special conditions which the partners may wish to make.

When no special duties are assigned to each one of the managers appointed in the articles of copartnership, the management shall be looked upon as a single body. (Opinion of November 18, 1889.)

See article 139 of this code.

ART. 126. The general copartnership must transact business under the name of all its members, of several of them, or of one only, it being necessary to add in the latter two cases to the name or names given the words "and company."

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This general name shall constitute the firm name or signature, in which there may never be included the name of a person who is not at the time a partner in the association.

Those who, not being members of the partnership, include their names in the firm denomination shall be subject to joint liability, without prejudice to the penal liability which may be proper.

(See article 147.)

ART. 127. All the members of the general copartnership, be they or be they not managing partners of the same, are personally and jointly liable with all their property for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to make use thereof.

In an opinion of December 17, 1873, the supreme court declared that all the members of a general copartnership, even though they be not administrators of the capital, are jointly liable for the results of the transactions made in the name and for the account of the partnership, although, in order that the property of the partners may be seized, it is necessary to first liquidate the property of the same; and in another opinion of January 8, 1881, said court established that all the property which belongs to the common capital of a commercial general copartnership is liable for the results of the transactions made in the name and for the account of said copartnership, none of the partners being permitted to divert from the common fund any amount for the payment of his private creditors, nor for any other purpose whatsoever, with the exception of the amount assigned him for expenses, nor to dispose of what is due him, even in case the common capital is divided, until all the liabilities of the said copartnership have been paid and canceled.

ART. 128. The partners not duly authorized to make use of the firm signature shall not make the company liable through their acts and contracts, even though they execute them in the name of the latter and under its signature.

The civil or criminal liability for these acts shall be incurred exclusively by the authors thereof.

ART. 129. If the management of the general copartnerships has not been limited by a special instrument to one of its members, all of them shall have the right to take part in the direction and management of the common business, and the partners present shall come to an agreement with regard to all contracts or obligations which may interest the company.

In an opinion of September 23, 1867, the supreme court laid down as doctrine that after an obligation had been established in favor of several members of a copartnership, any one thereof could legally demand its compliance for the benefit of the partnership, provided it does not appear that the administration and management of said copartnership has been intrusted to one of them exclusively.

ART. 130. No new obligation shall be contracted against the will of one of the managing partners, should he have expressly stated it; but if, however, it should be contracted it shall not be annulled for this reason, and shall have its effects without prejudice to the liability of the partner or partners who contracted it to the common capital on account of the failure they may cause.

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ART. 131. Should there be partners especially intrusted with the management, the other partners can not oppose nor hinder the actions of the former nor prevent its effects.

ART. 132. When the special power to manage and to use the signature of the copartnership has been conferred in a special condition of the articles of copartnership, the person who obtained the same can not be deprived thereof; but should the latter make an improper use of said power, and his management cause serious damage to the common capital, the rest of the partners may appoint from among themselves a comanager to take part in all transactions, or they may request the rescission of the articles before the judge or court of competent jurisdiction, who shall declare them annulled should said damage be proven.

ART. 133. In general copartnerships all the partners, be they managing or not, have a right to examine the condition of the administration and of the bookkeeping and to make the objections which they may consider proper, in accordance with the agreements contained in the articles of copartnership or in the general provisions of law.

ART. 134. Transactions made by the partners in their own names and with their private funds shall not be communicated to the company nor shall it be liable therefor, provided they are of a kind that partners may legally make for their own account and risk.

The supreme court, in an opinion of January 30, 1873, laid down that when the manager of an association contracts in a private capacity, the former shall not be liable.

ART. 135. The partners can not apply the funds of the copartnership nor make use of the firm signature for business for their own account; and should they do so, they shall lose to the benefit of the company that part of the profit which in the transaction or transactions made in this manner may be due them, and the articles of copartnership in so far as they are concerned shall be annulled, without prejudice to the return of the funds they may have made use of, and to indemnify the copartnership for all loss and damage which it may have suffered.

ART. 136. In general copartnerships which do not transact business in a specific branch of commerce their members can not make transactions for their own account without the previous consent of the copartnership, which can not refuse it without proving that it will suffer thereby manifest and pecuniary damage.

Partners who do not comply with this provision shall contribute to the common funds the profit they may derive from these transactions and shall individually suffer the losses should there be any.

In stating in this article "which have not adopted a specific branch of commerce" it must be understood that it is not mentioned in the articles of copartnership, as is deduced from the provisions of the following article:

ART. 137. If the copartnership fixed in its articles of copartnership the branch of commerce it is to engage in, the partners may legally

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transact all commercial business they may desire, provided it does not belong to the kind of transactions the copartnership of which they are partners is engaged in unless there is a special agreement to the contrary.

ART. 138. Partners giving their services and not contributing any capital (*socio industrial*) can not engage in transactions of any class whatsoever, unless expressly permitted to do so by the company, and should they do so the partners furnishing the capital (*socios capitalistas*) may, at their option, remove them from the company, depriving them of the profits due them in the same, or they may enjoy the profits said partners may have obtained in violation of this provision.

ART. 139. In general or in limited copartnerships, no partner may remove or divert from the common funds a larger amount than that assigned to each one for his personal expenses; should he do so, he may be compelled to repay it as if he had not completed the portion of the capital which he bound himself to contribute to the copartnership.

See articles 170 and 171 of this code.

ART. 140. Should there not have been stated in the articles of copartnership the portion of the profits to be received by each partner, said profits shall be divided pro rata, in accordance with the interest each one has in the copartnership, partners who have not contributed any capital, but giving their services, receiving in the distribution the same amount as the partner who contributed the smallest capital.

ART. 141. Losses shall be computed in the same proportion among the partners who have contributed capital, without including those who have not, unless by special agreement the latter have been constituted as participants therein.

ART. 142. The copartnership must credit to the partners the expenses they may incur, and indemnify them for the damages they may suffer, immediately and directly by reason of the business which the former may intrust to them; but it shall not be bound to indemnify for the losses the partners may incur by their own fault, in an accidental case, or on account of any other reason, independent of the business, during the time they took in transacting the same.

ART. 143. No partner can transfer to another person the interest he may have in the copartnership, nor can he substitute another person in his place for the discharge of the work under his charge in the partnership administration, without the previous consent of the partners.

ART. 144. The damage suffered by the copartnership by reason of malice, abuse of powers, or serious negligence on the part of one of the partners, shall obligate the author thereof to indemnify it, should the other partners request it, provided an express or virtual approval or ratification of the act on which the claim is based can not be deduced in any manner whatsoever.

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SECTION THIRD.

Limited copartnerships.[1]

ART. 145. The same statements shall be included in articles of limited copartnerships which are required for those of general copartnerships.

According to an opinion of the supreme court of October 8, 1881, the lack of registration of the articles of commercial copartnerships affects the rights of the partners among themselves, but not those of third persons who may have contracts with them.

ART. 146. Limited copartnerships must transact business under the name of all the members thereof, of several of them, or of one only, it being necessary to add in the latter two cases to the name or names given, the words "and company" and in all cases the words "limited copartnership."

ART. 147. This general name shall constitute the firm name, in which there may never be included the names of special partners.

Should any special partner include his name or permit its inclusion in the firm name, he shall be subject, with regard to persons not members of the copartnership, to the same liabilities as the managing partners, without acquiring any more rights than those corresponding to his character of special partner.

(See articles 144 and 149 of this code.)

ART. 148. All the members of the copartnership, be they or be they not managing partners of the limited copartnership, are jointly and severally liable for the results of the transactions of the latter in the same manner and to the same extent as in general copartnerships, as set forth in article 127.

They shall furthermore have the same rights and obligations which are prescribed in the foregoing sections for partners in general copartnerships.

The liability of special partners for the obligations and losses of the copartnership shall be limited to the funds which they contributed or bound themselves to contribute to the limited copartnership, with the exception of the case mentioned in article 147.

Special partners can not take any part whatsoever in the management of the interests of the copartnership, not even in the capacity of special agents of the managing partners.

The supreme court, in confirming the provisions of this article in its third paragraph, established in an opinion of December 4, 1861, that special partners discharge their duty in contributing to the copartnership the amount agreed upon.

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[1] See article 37 et seq. of the regulations for the organization and government of commercial registries.

According to an opinion of the supreme court of January 25, 1868, after a limited copartnership has been dissolved without debts, its partners may each withdraw what may belong to him.

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Special partners of copartnerships have not sufficient personality to object in administrative litigation to a royal order which may be prejudicial to the same, and which can only be impugned by the managing partner or by the collective partners. (Opinion of June 28, 1889. *Gaceta* of September 2, 1890.)

ART. 149. The provisions of article 144 shall be applicable to partners in limited copartnerships.

According to an opinion of the supreme court of April 17, 1868, every partner is liable to the copartnership for abuse of powers, carelessness, negligence, etc.

ART. 150. Special partners can not examine the condition and situation of the management of the partnership except at the times and under the penalties prescribed in the articles of copartnership or in additional ones.

Should the articles not contain any provision of this character the balance of the copartnership shall be communicated to the copartners at the end of the year without fail, exhibiting for a period which can not be less than fifteen days the exact data and documents proving said balance and permitting the transactions to be understood.

SECTION FOURTH.

Corporations.[1]

ART. 151. The articles of incorporation must include—

The names, surnames, and domiciles of the incorporators.

The name of the corporation.

The designation of the person or persons who are to direct the affairs of the same and the manner of filling vacancies.

The corporation capital, stating the value at which property, not cash, contributed has been appraised, or the basis on which the appraisement is to be made.

The number of shares into which the corporation capital is divided and represented.

The period or periods within which the portion of the capital not subscribed at the time of incorporation is to be contributed, otherwise stating the person or persons authorized to determine the time and manner in which the assessments are to be made.

The time the corporation is to continue in existence.

The transactions the capital is to be employed in.

The periods and manner of calling and holding general ordinary meetings of members, and the cases and manner of calling and holding extraordinary ones.

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[1] After a corporation has been legally incorporated, its statutes and regulations constitute the law of the contract, and the mutual rights and duties of the incorporators shall be decided thereby. (Opinion of November 30, 1871.)

Whenever an action is to be brought against corporations at the place of their domicile, as such shall be understood the one fixed in the statutes, even though it has agents in other places, who shall be considered as simple agents in representation of the corporation, which is the only one liable. (Opinion of April 15, 1860.)

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The submission to the vote of the majority of the meeting of members, duly called and held, of such matters as may properly be brought before the same.

The manner of counting and constituting the majority, in order to adopt binding resolutions, at ordinary as well as at extraordinary meetings.

There may furthermore be included in the articles all legal agreements and special conditions the members may agree to.

See article 119 of this code and 37 et seq. of the commercial registry regulations.

In an opinion of June 30, 1888, it is laid down that in order that resolutions adopted at a general meeting be binding and efficient with regard to dissenting members it is an indispensable requisite that they be absolutely in accordance with the agreements and conditions of the articles of incorporation, which must be strictly interpreted.

ART. 152. The name of a corporation shall be adequate to the purpose or purposes of the branch of business adopted.

No name can be adopted identical with that of a preexisting corporation.

See number 3 of article 122.

There is no doubt that paragraph 2 intends to include in the code a class of ownership of these names and a guaranty similar to that of trade-marks, etc.

ART. 153. The liability of the members of a corporation for the obligations and losses of the same shall be limited to the funds they contributed or bound themselves to contribute to the corporate capital.

ART. 154. The corporate capital, composed of the stock and of the accrued profits, shall be liable for the obligations contracted in its management and administration by a person legally authorized thereto and in the manner prescribed in the articles of incorporation, by-laws, or regulations.

The opinion of the supreme court of July 12, 1883, confirms the provisions of this article, according to which the property of the corporation is liable for the management of the same, and can not be applied to private obligations of its members.

ART. 155. The managers of corporations shall be designated by the members thereof in the manner determined in the articles of incorporation, by-laws, or regulations.

ART. 156. The managers of a corporation are its agents, and during the time they observe the rules of the commission they shall not be subject to personal nor to joint liability on account of the corporation business; and if, by reason of infraction of the laws and the statutes of the corporation, or if by acting in violation of the legitimate resolutions adopted at general meetings, they should incur losses, and there should be several persons responsible therefor, each one of the latter shall answer pro rata.

The supreme court laid down in an opinion of April 2, 1863, that one of the things which the manager of a corporation can not do is to contract loans for the same without being expressly authorized thereto; and in an opinion of January 30, 1883,

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that when the manager of a corporation transacts business in a private capacity he does not bind the corporation; in another opinion of December 5, 1874, that when a corporation authorizes its manager or administrator to carry out the purposes of the corporation he does not require special authorization for drafts; and in an opinion of May 23, 1883, that if an action to secure a final judgment against a corporation is in question, the latter is the one to be required to pay, and to which notice of auctions is to be given, through its agents.

ART. 157. Corporations are under the obligation to publish monthly in the *Gaceta de Madrid*[1] a detailed balance of the business, stating the rate at which the balance on hand in securities is calculated, as well as all kinds of property, the prices of which can be quoted on exchange.

ART. 157. (Philippines.) (See the note to this article.)

ART. 158. The members or stockholders of corporations can not examine the management thereof nor make any investigation with regard thereto except at the times and in the manner prescribed by their statutes and regulations.

ART. 159. Corporations existing prior to the publication of this code, and which are still governed by their regulations and by-laws, may choose between continuing to be governed thereby or by the provisions of this code.

See the royal order in the note to article 3 of the royal decree promulgating this code.

With regard to Cuba and Porto Rico the royal decree of January 28, 1886, in its article 2, which extended this code to said islands, provided: "That corporations existing on April 30, 1886, must make use of the right granted them by article 159 of the code of commerce by means of a resolution, adopted at a general extraordinary meeting called expressly for the purpose in accordance with their by-laws, and in a proper case in accordance with the law of January 21, 1870, which is declared applicable to the islands of Cuba and Porto Rico.

"These resolutions must be published in the *Gaceta* of Havana or of Porto Rico, as the case may be, and a copy shall be presented in the Commercial Registry."

Finally, with regard to the Philippines, the royal decree of August 6, 1888 (see the full text thereof in the respective appendix says: "The power granted by article 159 to corporations must be made use of by the same within the period of six months, and after said period has elapsed without said privilege being exercised, it shall be understood that they are governed by the provisions of the code."

The provisions of this code can not be applied to the associations which have not made use of the right of option in accordance with this article and with article 3 of the royal decree of August 22, 1885, by which this code was put into operation. (Opinion of June 30, 1888.)

SECTION FIFTH.

Shares.

ART. 160. The common capital of limited copartnerships belonging to the special partners and that of corporations may be represented by shares or other equivalent certificates.

See section 3 of chapter 1, title 3, of the stamp law of September 15, 1892, with regard to shares and stock issued by copartnerships and corporations.

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[1] The code of commerce in force in the Philippines states *Gaceta de Manila* instead of *Gaceta de Madrid*.

Although it is not especially so stated in the corresponding amendments, the same changes should be understood for Cuba and Porto Rico, with relation to the official gazettes of the said islands, as is clearly deduced from the last paragraph but one of the preamble of the decree.

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ART. 161. The shares may be payable to order or to bearer.

ART. 162. The shares payable to order must be recorded in a book which the copartnership or corporation shall keep for this purpose, and in which subsequent transfers shall also be entered.

ART. 163. The shares payable to bearer shall be enumerated, and shall be recorded in stub books.

See article 38 et seq. of the regulations for the organization and government of commercial registries.

ART. 164. In all certificates of shares, either payable to order or to bearer, there shall always be entered the sum which has been paid on account of its nominal value or that they are fully paid.

In shares payable to order, until the full cost thereof has been paid, the first subscriber or holder of the share, his assignee, and each person succeeding the latter, should they be transferred, shall answer for the payment of the portion not contributed, jointly and at the option of the directors of the corporations, against whose liability, thus determined, no agreement whatsoever suppressing it can be established.

After an action to enforce said liability has been instituted against any of the persons mentioned in the foregoing paragraph no new action against any other of the holders or assignees of the shares can be instituted, except when it is proved that the person who was first or previously proceeded against is insolvent.

When shares not fully paid for are payable to bearer the persons who appear as the holders thereof only shall be liable for the payment of their share. Should they not appear, making a personal claim impossible, the corporations or copartnerships may order the calling in of the certificates corresponding to the shares on which the requisite quotas for the full payment of the value of each one have not been satisfied.

In such case the copartnerships or corporations shall have the right to issue duplicate certificates of the same shares, in order to convey them for and against the account of the defaulting holders of the certificates annulled.

All shares shall be payable to order until 50 per cent of their nominal value has been paid in. After said 50 per cent has been paid in they may be converted into shares payable to bearer, if it is thus resolved upon by the copartnerships or corporations in their by-laws or by means of special acts subsequent to the same.

ART. 165. New series of stock can not be issued before the total payment of the series previously issued has been made. Any agreement to the contrary included in the articles of copartnership or of corporation, in the by-laws or regulations, or any resolution adopted at a general meeting of members in opposition to this precept shall be null and of no value.

ART. 166. Corporations may only purchase their own shares with the profits of their capital for the purpose of amortization.

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In case of a reduction in the corporate capital, when it is proper in accordance with the provisions of this code, there may also be amortization with a portion of said capital, the legal measures which may be considered advisable being employed.

ART. 167. Corporations can never give guaranties by pledging their own shares.

ART. 168. Corporations sitting in a general meeting of stockholders previously called for the purpose shall have the power to resolve upon the reduction or increase of the corporate capital.

In no case can these resolutions be adopted at ordinary meetings unless it was stated, in the call or sufficient time in advance, that an increase or reduction of the capital would be discussed and voted upon.

The by-laws of each corporation shall fix the number of members and the amount of capital which shall be required to be present at meetings at which said capital is to be reduced or increased or in which the modification or dissolution of the corporation is to be treated of.

In no case shall it be less than three-fourths of the number of the former and two-thirds of the nominal value of the latter.

The directors may immediately take steps to carry out the resolution of reduction adopted legally at a general meeting if the capital remaining after said reduction has been made exceeds 75 per cent of the amount of the debts and obligations of the corporation.

Otherwise the reduction can not take place until all the debts and obligations pending at the date of the resolution have been liquidated and paid, unless the copartnership or corporation obtains the previous consent of its creditors.

For the execution of this article the directors shall present to the judge or court an inventory, in which the stock held shall be appraised at the average quotation for the last quarter and the property by a capitalization of the profits accruing therefrom according to the legal rate of interest on money.

As an explanation of the contents of this article, see article 151 of this code.

ART. 169. Funds belonging to foreigners invested in corporations shall not be subject to reprisals in case of war.

See the declaration between Spain and Great Britain for the purpose of defining the situation of corporations and of other commercial and financial associations, of January 28, 1883, published in the *Gaceta* of February 2 of the same year.

SECTION SIXTH.

Rights and obligations of members.

ART. 170. If within the period agreed upon any member does not contribute to the common funds the amount of capital he has obligated himself to contribute, the association may choose between proceeding to obtain an execution against his property to recover the portion of capital not contributed, or to rescind the contract with regard to the member in default, retaining the amounts which are due the common capital.

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For the proceedings to secure an execution see in title 15 of the law of civil procedure for the Peninsula, articles 1429 et seq., articles 1427 et seq. of that for Cuba and Porto Rico, and articles 1411 et seq. of that for the Philippines.

The supreme court established, in an opinion of June 24, 1860, that an action *pro socio* can only be instituted by those who, being members of an association, desire to enforce the fulfillment of the obligations which they mutually imposed on each other.

ART. 171. A member who, for any reason whatsoever, delays the full contribution of his capital, after the period fixed in the articles of association has elapsed, or should said period not have been fixed therein, from the time the fund is established, shall pay into the common funds the legal interest on the money he has not delivered at the proper time and the amount of the damages and losses he may have occasioned by reason of his default.

See article 218, No. 4, of this code.

ART. 172. When the capital or the part thereof which a partner is to contribute consists of property, the appraisement thereof shall be made in the manner prescribed in the articles of association, and should there be no special agreement on the matter the appraisement shall be made by experts selected by both parties and according to current prices, subsequent increases or reductions therein being for the account of the association.

In case of disagreement between the experts a third one shall be designated, selected by lot from among persons of his class who appear as paying the highest taxes in the locality, in order that he may adjust said disagreement.

As an addition and explanation of the article we treat of, see articles 2117 of the law of civil procedure in force in the Peninsula, 2078 of that for Cuba and Porto Rico, and 2038 of that for the Philippines.

ART. 173. The managers or directors of commercial associations can not refuse to permit partners or stockholders to examine all the vouchers of the balances drawn up showing the condition of the management, with the exception of the provisions of articles 150 and 158.

See the articles referred to and article 2166 of the law of civil procedure.

ART. 174. The creditors of a member shall not have, with regard to the association, not even in the case of the failure of the same, any further right than that of attaching and collecting the amounts which may be due the debtor partner by reason of profits or liquidation.

The provisions contained in the latter part of the foregoing paragraph shall not be applicable to stock companies, except when said stock is payable to order, or when the legitimate owner thereof is established without question, should it be payable to bearer.

The supreme court, in an opinion of July 12, 1883, stated that the property of an association is liable in the first place to the management of the same, and the creditors of the members may only collect the interests of the latter after the definite liquidation with relation to them has taken place; and in another opinion of December 19, 1870, that, in the case of the failure of an association, the private creditors of the members are not included among those of the association, but that after the latter have been satisfied, the former may make use of their right against the residue due the debtor member.

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SECTION SEVENTH.

Special rules for loan associations.

ART. 175. The following transactions are mainly the business of these associations:

1. To receive subscriptions or contract loans for the government, and provincial or municipal corporations.

2. To acquire public funds and shares or securities of all kinds of industrial undertakings or of loan associations.

3. To create companies of railroads, canals, factories, mines, docks, general warehouses, lighting, excavations and breaking of ground, irrigation, drainage, and any other industrial enterprises or those of public utility.

4. To effect the fusion or transformation o. all kinds of commercial associations, and take charge of the issue of shares or securities of the same.

5. To administer and lease all kinds of taxes and public services, and execute for their own account or assign, with the approval of the Government, contracts subscribed for the purpose.

6. To sell or give as security all shares, bonds, and securities acquired by the association, and exchange them when they consider it advisable.

7. To make loans on public effects, shares or bonds, produce, commodities, crops, estates, factories, vessels and their cargoes and other property, and open credits in account current, receiving as a guaranty property of the same kind.

8. To effect for the account of other associations or persons all kinds of collections and payments, and transact any other business for the account of others.

9. To receive on deposit all kinds of negotiable paper and cash, and keep current accounts with any corporations, copartnerships, or persons.

10. To draw and discount bills of exchange and other exchange paper.

Loan associations which are established or incorporated after the promulgation of the marine mortgage law, which was done on August 23, 1893, and which propose, either specially and exclusively or as one of their branches of business, to make loans on vessels, may issue certificates or bonds of marine credit.

Loan associations in existence at the time this laws goes into operation which have included in the business to which they may devote themselves that of making loans on vessels, in accordance with the provisions of this article, can not issue any bonds or marine credit certificates without amending their by-laws for the purpose, after the proceedings and requisites established therein and in the articles of association, and not without previously recording the new agreement in the commercial registry, in accordance with the provisions of article 25 of this code.

The marine credit bonds or certificates issued by the associations authorized thereto, shall be payable to bearer or to order, with or without amortization, and with shares repayable at fixed periods or by lot, with or without premium.

The nominal capital of these securities and the amounts of the premiums, should there be any, which are in circulation, shall not exceed the amount of the capital of the loans contracted.

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When by reason of the amortization, or for any other reason whatsoever, mortgage creditors repay the whole or part of their loans, a similar sum of securities will be set apart for amortization, which may be in circulation unless other loan contracts have been negotiated in the mean time for an equal or greater sum. (Law of August 21, 1893.)

ART. 176. Loan associations may issue obligations for an amount equal to that invested in, and which is represented by securities on hand, in accordance with the provisions of the title relating to the commercial registry.

These obligations shall be payable to order or to bearer at a fixed period, which shall not be less[1] than thirty days in any case, with the amortization, should there be any, and the rate of interest fixed.

By a royal order of December 10, 1894 (*Gaceta* of January 9, 1895), it is ordered among other things—

"That in order to make use of the power granted commercial associations by article 176 of the code of commerce the latter must comply with the provisions of the royal order of January 16, 1893, and strictly observe the provisions contained in the said article and in other articles of the code which may be applicable, it being forbidden in the issue of obligations payable to bearer to establish clauses or conditions tending to annul the purposes of the said legal provisions."

By a royal order of January 16, 1893, it was ordered that the obligations which by virtue of the provisions of this article are issued and placed in circulation hereafter by loan associations which can legally issue this class of obligations, shall be at least 25 centimeters long and 20 centimeters wide without the coupons they must necessarily have at their borders, declaring, however, obligations legally issued and which are already in circulation exempted from complying with these requisites, provided they fulfill the requirements of the royal order of July 16, 1881.

Said provision prescribed that obligations issued by associations or private parties conform with the form and dimensions, at least, of the commercial promissory notes issued by the Treasury as public securities, in order that by this means they can not be confounded in any manner whatsoever with bank notes, which the Bank of Spain is exclusively authorized to issue. (*Gaceta* of August 4, 1881.)

See the addition to article 179.

ART. 176. (Philippines.) (See the note to the article for the Peninsula.)

SECTION EIGHTH.

Banks of issue and discount.

ART. 177. The following is the principal business of these institutions:

Discounts, deposits, current accounts, collections, loans, drafts, and contracts with the Government or public corporations.

ART. 178. Banks can not make transactions extending over a period of more than ninety days.

Neither shall they discount drafts, promissory notes, or other commercial paper without the guaranty of two responsible firms.

ART. 179. Banks may issue notes payable to bearer, but their admission in business transactions shall not be compulsory. This privilege of the issue of notes payable to bearer shall continue in suspense,

[1] In the code of commerce in force in the Philippines, instead of "which shall not be less" this article says "which shall not exceed."

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however, during the time the privilege actually enjoyed by the National Bank of Spain, by virtue of special laws, continues.

All legislation in this code with relation to the issue of notes payable to bearer is suspended by the express provision of the above article during the time of the existence of the privilege of the Bank of Spain; therefore, the royal order of July 16, 1881, issued by the treasury department, must be considered as still in force, for the purpose of preventing that under other rights a privilege be granted in conflict with the exclusive privilege enjoyed for the fiduciary circulation. (Royal order of January 16, 1893. *Gaceta* of the 27th.)

See the addition to article 176.

ART. 179. (Cuba and Porto Rico.) Banks may issue notes payable to bearer, but their admission in business transactions shall not be compulsory. This privilege of the issue of notes payable to bearer shall continue in suspense, however, during the time the privilege actually enjoyed by the *Spanish Bank of the Island of Cuba* continues.

ART. 179. (Philippines.) Banks may issue notes payable to bearer, but their admission in business transactions shall not be compulsory. This privilege of the issue of notes payable to bearer shall continue in suspense, however, during the time the privilege actually enjoyed by the *Spanish Philippine Bank*, by virtue of special laws, continues.

The laws in force on the issue of notes referred to in this article are contained in the royal decree of March 19, 1874, granting privileges to the Bank of Spain for the issue of notes, and in that of August 16, 1878, granting the same privilege to the colonial banks.

A royal order of December 10, 1894 (*Gaceta* of January 9, 1895), contains among other provisions:

"That credit copartnerships or corporations are prohibited to issue paper money under the name of deposit receipts, orders on current accounts, or under any other name by which a commercial contract appears to be evidently assumed to give legal appearance to a manifest infraction of the second paragraph of article 179 of the code of commerce."

ART. 180. Banks shall keep in their vaults in cash at least one-fourth of the amount of the deposits and current cash accounts and of notes in circulation.

ART. 181. Banks are under the obligation to change their notes for cash upon their presentation by the bearer.

Noncompliance with this obligation shall give rise to an action to secure a judgment in favor of the bearer, after a demand for payment, through a notary.

For the application of this article see No. 5 of article 1429 of the law of civil procedure in force in the Peninsula, the same number of article 1429 of that for Cuba and Porto Rico, and article 1411 of that for the Philippines.

According to an opinion of April 25, 1876, the legal dissolution of banks of issue deprives notes of the character of fiduciary money, with the exception of the rights against the institution on account of a voluntary deposit, according to article 23 of the law of January 28, 1856.

ART. 182. The value of the notes in circulation, together with the sum represented by the deposits and current accounts, can not exceed,

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in any case, the amount of the cash reserve and of the securities on hand which can be realized within the maximum period of ninety days.

ART. 183. Banks of issue and discount shall publish, at least once a month, and under the liability of their directors, in the *Gaceta* and official bulletin of the province statements of their condition.

ART. 183. (Philippines.) Banks of issue and discount shall publish, at least once a month, and under the liability of their directors, statements of their condition in the *Gaceta of Manila and in the official bulletin, where there is one.*[1]

SECTION NINTH.

Railroad and other public work companies.

ART. 184. The following are the principal transactions of these companies:

1. The construction of railroads and other public works of any kind whatsoever.

2. The operation thereof, either in perpetuity or during the period of time fixed in the concession.

ART. 185. The capital stock of the company, together with the subsidy, should there be any, shall represent at least half the amount of the total estimate of the work.

The companies can not establish themselves before half of the capital stock has been subscribed to and 25 per cent thereof has been realized.

ART. 186. Railroad companies and companies of other public works may issue bonds payable to bearer or to order unrestrictedly and without further limitations than those contained in this code and those established in their respective by-laws.

These issues must be recorded in the commercial registry of the province; and if the bonds are secured by mortgage, said issues shall furthermore be recorded in the proper registries of property.

The issues of prior dates shall have preference over subsequent ones for the payment of coupons and for the amortization of the bonds, should there be any.

ART. 186. (Philippines.) Railroad companies and companies of other public works may issue bonds payable to bearer or to order unrestrictedly and without further limitations than those contained in this code and those established in their respective by-laws.

These issues must be recorded in the commercial registry of the province; and if the bonds are mortgage bonds, said issues shall furthermore be recorded in the "*escribanía*" *or* "*receptoría*" *in charge of the registry of property.*[2]

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[1] The same change should be understood as made for Cuba and Porto Rico, as is deduced from the paragraph next to the last of the preamble of the respective decree.

[2] The registry of property having been established since December 1, 1889, we understand that the foregoing amendment is of no value, and that it should be enforced in the manner drafted for the Peninsula.

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The issues of prior dates shall have preference over subsequent ones for the payment of coupons and for the amortization of the bonds, should there be any.

ART. 187. The bonds issued by companies shall be subject to amortization or not, at their option, and in accordance with the provisions of their by-laws.

Whenever railroads or other public works enjoying a subsidy from the State are in question, or for the construction of which a legislative or administrative concession was granted, if the concession is temporary, the bonds issued by the concessionnaire company shall be withdrawn by amortization or extinguished within the period of said concession, and the State shall receive the work at the termination of this period free from all incumbrances.

ART. 188. Railroad companies and other public work companies may sell, assign, and transfer their rights in the respective undertakings, and may also combine with other similar companies.

In order that these transfers and fusions may be effectual, it shall be necessary—

1. That the stockholders unanimously agree thereto, unless it is otherwise prescribed in the by-laws with relation to a change in the object of the company.

2. That all the creditors of said companies also agree thereto. This consent shall not be necessary when the purchase or fusion takes place without confounding the guaranties and mortgages and when the creditors retain their respective rights in full.

See article 107, case number 6, of the mortgage law for the Peninsula and for the colonies, which contains the restrictions under which railroads, canals, bridges, and other works destined to the public service may be mortgaged, the operation of which has been granted by the government, and the buildings and lands which not being directly and exclusively destined to the said service belong to private ownership, even though they are annexed to said works.

ART. 189. For the transfers and fusions of the companies referred to in the foregoing article no authorization whatsoever shall be necessary from the government, even though the work has been declared of public utility for the purposes of the right of the exercise of eminent domain, unless the company enjoys a direct subsidy from the State, or has been incorporated by a law or other administrative provision.

ART. 190. The action to secure an execution referred to in the law of civil procedure with regard to the due coupons of securities issued by railroad companies and companies of other public works, as well as with relation to the bonds drawn by lot for amortization, should there be any, can only be brought against the net receipts of the company and against the other property owned by the same, which is not a part of the road, or work, nor necessary for the operation.

ART. 191. Railroad and other public work companies may employ the funds remaining from the construction, operation, and payment of

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credits when they fall due, in the manner they may deem fit, in accordance with their by-laws.

Said surplus shall be invested at such times, as not to leave in any case the construction, preservation, operation, and payment of credits unattended to, under the liability of the directors.

ART. 192. After the forfeiture of a concession has been declared the creditors of a company shall have as a guaranty:

1. The net receipts of the company.

2. When said receipts are not sufficient the net proceeds from the works sold at public auction for the time still remaining of the concession.

3. The other property owned by the company, if it does not constitute part of the road or of the work, or is not necessary for its movement or operation.

With regard to the manner of enforcing the guaranty referred to in the foregoing article, there is in force, according to article 1448 of the Law of Civil Procedure for the Peninsula, 1446 of that for Cuba and Porto Rico, and 1430 of that for the Philippines, the law of November 12, cited, of which articles 9 et seq. establish the procedure to be observed therefor.

SECTION TENTH.

General warehouse associations.[1]

ART. 193. The following are the principal transactions of the associations:

1. The deposit, preservation, and custody of produce and merchandise intrusted to them.

2. The issue of receipts to order or to bearer.

ART. 194. The receipts issued by general warehouse associations for the produce and merchandise they accept to care for shall be negotiable, shall be transferred by indorsement, assignment, or in any other manner transferring ownership, according as to whether they are issued to order or to bearer, and shall have the force and value of commercial bills of lading.

These receipts must necessarily state the class of goods, with the number or amount each one represents.

ART. 195. The owner of the receipts is vested with the full ownership of the commodities deposited in the warehouses of the association, and shall be exempted from all liability for claims brought against the receiver, the indorsers, or prior owners, except if said claims arise from the transportation, storage, and preservation of the merchandise.

ART. 196. If a creditor who has legal possession of a receipt as security should not be paid on the day his claim falls due, he may bring

[1] "With regard to these associations," says Mr. Alonso Martinez in his statement of reasons preceding the project of the code, "the project does not include any modification whatsoever, limiting itself to reproducing the law of July 9, 1862, which laid down for the first time the rules for this class of associations, the doctrine of which supports the principles of commercial liberty and of protection to the interests of third persons."

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an action against the association to gain possession of the goods on deposit sufficient to cover his credit, and shall have preference over other debts of the depositor, with the exception of those mentioned in the foregoing article, who shall enjoy the preference.

ART. 197. The sales referred to in the preceding article shall be made in the warehouse of the association, without the necessity of a judicial decree, at a public auction previously announced, and through a licensed broker, where there is any, and otherwise through a notary.

ART. 197. (Philippines.) (The same text, adding at the end: *or the person discharging his duties.*)

ART. 198. General warehouse associations shall in all cases be liable for the identity and preservation of the goods on deposit, according to law relating to deposits for which compensation is agreed on.

SECTION ELEVENTH.

Mortgage loan associations or banks.[1]

ART. 199. The following shall be the principal transactions of these associations or banks:

1. To make loans on real estate on time.
2. To issue mortgage bonds and certificates.

ART. 200. Loans shall be made on mortgages of real estate the ownership of which is recorded in the registry in the name of the person creating said mortgage, and shall be repaid in annual payments.

The mortgage certificates of mortgage banks shall bear a stamp of 10 céntimos, which shall be placed on the original and on the stub, according to article 158 of the law of September 15, 1892.

ART. 201. These associations and banks can not issue bonds nor certificates to the bearer during the time the privilege actually enjoyed by virtue of special laws by the Mortgage Bank of Spain continues.

The privilége referred to in this article is contained in the royal decree of July 24, 1875, which is as follows:

1. The mortgage bank created in Madrid under the name of Mortgage Bank of Spain, by the law of December 2, 1872, shall hereafter be the only one of its class, unless the Cortes order otherwise, the additional article of that law extending its provisions of a general character to other establishments of land credit which may be created, being therefore without effect, as well as the privilege granted by the law of December 19, 1869, to unrestrictedly establish banks or associations for mortgage loans with the right to issue mortgage certificates.

2. There shall be understood as included in the privilege granted by article 23 of the said law of December 2, 1872, to the mortgage bank for the purpose of negotiating mortgage certificates or bonds issued, the right to purchase and sell said bonds or certificates, etc.

ART. 201. (Cuba, Porto Rico, and the Philippines.) The power to issue bonds and certificates payable to bearer, referred to in the second paragraph of article 199, will not modify the concessions made by the

[1] The secretary says in his statement of reasons: "With regard to these associations or banks, the necessary rules are issued, laid down in order to guarantee the rights of the creditors, and to avoid, so far as possible, the prejudices they might suffer if certain restrictions were not established."

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Government in favor of other associations or banks, in accordance with the royal decree of August 16, 1878.

By this royal decree the exclusive privilege of fiduciary circulation was granted to the colonial banks, which shall be denominated Spanish Bank of Cuba (Banco Español de Cuba), Spanish Bank of the Philippines (Banco Español de Filipinas), and Spanish Bank of Porto Rico (Banco Español de Puerto Rico).

The following royal order of July 13, 1895, published in the *Gaceta* of the 16th, is of the greatest importance and of true transcendence for the banking institutions of our colonies:

"YOUR EXCELLENCY: There having been submitted to the full council of state, for a report thereon, the proceedings relating to the project of regulations for mortgage loans of the Spanish Bank of Porto Rico, said high body renders the following report:

"'YOUR EXCELLENCY: With a royal order communicated by the department under the charge of Your Excellency on June 12 last, received on the 17th, there was forwarded to this council the annexed proceedings on a plan of regulations for mortgage loans of the Spanish Bank of Porto Rico, in order that said full council might render an opinion as to whether a special law will be necessary in order that said credit institution might issue bonds or mortgage certificates payable to bearer, or whether the management can itself grant the exclusive privilege for the purpose, in accordance with the provisions of the royal decree of August 16, 1878.

'The approval of certain resolutions of said bank having been refused, which referred to a plan of regulations for mortgage loans, because the bureaus of that department believed that said regulations should be the subject of a special concession granted by the Government in accordance with the royal decree of August 16, 1878, the governor of the bank, in a communication of October 14 of said year requested, while making several observations on the subject, that the said concession be granted in a subsidiary manner; and a report on the proposed plan of regulations having been made thereon by the bureau, and this council having been asked for an opinion, an opinion was rendered to the effect that, said concession being necessary and said bank having applied a portion of its capital in making loans without the same, said institution had acted in an arbitrary and illegal manner; this declaration being necessary in order that said bank might request the requisite concession in due form, after which, if the request is complied with, it would be proper for the bank to propose the extension of its by-laws and definite regulations for mortgage loans, for which reason the council did not examine the plan of regulations attached to the proceedings.

'By a royal order of February 14, 1894, this was decided in concurrence with the council, the resolution of the secretary containing the following statements: 'The authority having been requested in a subsidiary manner in the communication of October 14, in view of the changes made in the plan of regulations, let the bank draw up the extension of its by-laws and definite regulations.' And in consequence thereof the Governor-General of Porto Rico, with a letter, No. 228, of March 18 last, forwards a certified copy of the resolutions of the general board of stockholders of the bank, adopted in the sessions of the 25th of the preceding February and on the 2d of this month, in which there is proposed a plan of addition to the by-laws of the institution for the regulation of mortgage transactions.

'The proper bureau of that department, with which the direction agrees, abstains from studying the regulations proposed in detail until the question raised by article 1 of the same is decided, and which assigns to the bank the exclusive privilege of issuing mortgage certificates within the territory of the island payable to bearer. After examining this particular the bureau understands that such exclusive privilege can not be granted except by means of a special law, because notwithstanding the reference made by article 201 of the code of commerce in force in Porto Rico to the royal decree of August 16, 1878, several associations or banks may exist with the power to issue certificates payable to bearer without one bank only having the

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exclusive privilege requested. Therefore the report of this council, requested by Your Excellency, includes these particulars.

'After having examined with the greatest care the foregoing data, says the council, to the effect that, according to the royal decree of August 16, 1878, and in accordance with article 13 of the budget law of Porto Rico for 1886–87, there was authorized by a royal decree of March 23, 1887, the concession of the bank of that island, a simple reading of the provisions therein cited is sufficient to decide the actual question of the proceedings, because in the royal decree of 1878, as well as in the other provisions mentioned, the privilege of fiduciary issue is granted exclusively to the colonial banks as institutions of issue and discount; that is to say, that although said royal decree authorizes the banks to devote a portion of their capital to transactions which are properly mortgage transactions, it does not in any manner whatsoever, neither directly nor indirectly, assume that the issue of mortgage certificates or bonds has the character of an exclusive privilege, because the royal decree in its second article expressly limits this particular to the fiduciary issue included in the original distinctive character of the bank, and article 16 does not authorize the exclusive issue of certificates with relation to mortgage transactions; it being necessary to add that, according to articles 1 and 2 of the royal decree of March 23, 1887, the exclusive privilege refers only to the issue of bank notes, while article 3, in authorizing that the reserve fund be devoted to mortgage transactions up to 20 per cent thereof, does not establish an exclusive privilege for this class of transactions.

'But should the above statements not be sufficient, and, examining the subject, in view of the provisions of the code of commerce in force in the island, the same conclusion must be accepted, because article 199, in its second paragraph, grants all mortgage loan associations or banks the privilege of issuing mortgage bonds or certificates, and although article 201 states that this privilege does not modify the concessions made by the Government in favor of other associations or banks, in accordance with the royal decree of August 16, 1878, there must be taken into consideration that in the preamble of the royal decree of January 28, 1886, by which the said code was extended to Porto Rico, there was stated that the Government, in accordance with the codification commission, had decided not to grant any more privileges than the one already granted the Spanish Bank of Cuba, and that the rule of liberty having to be considered preponderating in transactions, the explanation of article 201 does not deprive other banks of this character from making mortgage transactions.

'Therefore, although the terms of article 201 of the code can not be considered perfectly clear and exact, in saying that the preamble of the said royal decree (with the report of the codification commission) constitutes an authentic interpretation of the said code with regard to the points contained in the proceedings, we can not do less than support the general rule of liberty.

'The council believes, therefore, in accordance with the bureaus of that department, that the administration has not the power to grant the Bank of Porto Rico the exclusive privilege to issue mortgage certificates payable to bearer, and that, notwithstanding the reference made by article 201 of the code of commerce to the royal decree of August 16, 1878, several associations or banks may exist at the same time in the island with the power to issue said certificates.

'Such is the opinion of the council; Your Excellency, however, will decide, together with His Majesty, what you may consider best.'

"And His Majesty the King (whom God preserve), and in his name the Queen Regent of the Kingdom, having agreed to the foregoing opinion, by his royal order I communicate it to Your Excellency for your information and consequent action, it also being the wish of His Majesty that the form of regulations on mortgage loans forwarded by Your Excellency be modified, taking into consideration the foregoing resolution, and this royal order to be published in full in the *Gaceta de Madrid* and in that of that capital.

"May God preserve Your Excellency many years.

"MADRID, *July 13, 1895.*

"CASTELLANO.

"The GOVERNOR-GENERAL OF PORTO RICO."

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ART. 202. Loans made to provinces and to towns are excepted from the mortgage required by article 200 when said provinces or towns are legally authorized to contract loans within the limit of said authorization, and provided the repayment of the capital loaned, together with interest and expenses, is assured by revenues, taxes, and capitals, or surtaxes or special imposts.

Loans to the State are also excepted, which can be made, furthermore, on promissory notes of purchasers of national property.

Loans to the State, to provinces, or to towns may be repaid within a period of less than five years.

ART. 203. In no case may loans exceed half the value of the property on which the mortgage is to be created.

The basis and manner of appraising the real property shall be fixed exactly in the by-laws or regulations.

ART. 204. The amount of the coupon and the rate of amortization of mortgage certificates, which are issued by virtue of a loan, shall never exceed the amount of the net annual profits which the real estate offered and taken in mortgage as security for the said loan produce on an average during five years. The computation shall always be made with relation to the loan, the income of the property mortgaged, and the annual premium of the certificates issued by virtue of said mortgage. This annuity may at any time be less than the net income of the respective real estate mortgaged as security for the loan and for the issue of the certificates.

ART. 205. When the real estate mortgaged diminishes in value by 40 per cent, the bank may request the increase of the mortgage in order to cover said depreciation, or the annulment of the contract, and the debtor shall choose between these two measures.[1]

The provisions of this article and those of article 206 are suspended in the Peninsula and adjacent islands as a consequence of the privilege established in article 201.

ART. 206. Mortgage loan banks may issue mortgage certificates to an amount equal to the total value of the loans on real estate.

They may, furthermore, issue special obligations for the amount of the loans to the State, to provinces, or to towns.

ART. 207. The mortgage certificates and special obligations treated of in the foregoing article shall be payable to order or to bearer, with or without amortization, for short or long periods, with or without premium.

These certificates and obligations, their coupons and the premiums, shall be the basis for an execution in the manner prescribed in the law of civil procedure.

With regard to the procedure to be pursued in order to obtain the cash value of the mortgage certificates, obligations, etc., see Title XV of the Law of Civil Procedure, articles 1429 to 1543 for the Peninsula, 1427 to 1478 of that for Cuba and Porto Rico, and 1411 et seq. of that for the Philippines.

[1] In the same article amended for the Philippines, *between which measures* is substituted for *between these two measures*.

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ART. 208. The mortgage certificates and special obligations, as well as their interest and coupons, and the premiums assigned to them, shall be secured, with preference over all other creditors or obligations, by the credits and loans in favor of the bank or association which may have issued the same and which represent said credits and loans, being, therefore, jointly and severally liable for the payment thereof.

Without prejudice to this special guaranty, they shall enjoy the general guaranty of the capital of the association; also with preference in regard to the latter over the credits resulting from other transactions.

ART. 209. Mortgage loan banks may also make loans secured by mortgage, repayable in a period of less than five years.

These loans at short time shall be without amortization, and shall not authorize the issue of mortgage obligations or certificates, and must be made from the capital of the common funds and from the accrued profits.

ART. 210. Mortgage loan banks may receive, with or without interest, capitals on deposit, and employ half thereof in making advances for a period not to exceed ninety days on their mortgage obligations and certificates, as well as on any other deeds which banks of issue and discount receive as security.

In case of default in payment on the part of the person who secured the loan, the bank may demand the sale of the certificates or deeds given as security, in accordance with the provisions of article 323.

ART. 211. All combinations for mortgage loans, including mutual associations of landowners, shall be subject, in so far as the issue of mortgage certificates and obligations is concerned, to the rules contained in this section.

SECTION TWELFTH.

Special rules for agricultural banks and associations.

ART. 212. The following shall be the principal transactions of these associations:

1. To make loans in cash or in kind, for a period not to exceed three years, on products, crops, cattle, or other special pledges or securities.

2. To guarantee with their signature promissory notes and paper demandable within a period not to exceed ninety days, in order to facilitate its discount or negotiation to the owner or farmer.

3. Other transactions, the purpose of which is to favor the breaking or improving of ground, draining of lands, and the development of agriculture and other industries related thereto.

ART. 213. Agricultural loan banks or associations may have agents outside of their domicile who may personally answer for the solvency of the landowners or tenants who request the assistance of the association, placing their signature on the promissory note which said association is to discount or indorse.

ART. 214. The guaranty or indorsement placed by these associations or their representatives, or by the agents referred to in the foregoing

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article, on the promissory notes of the landowner or farmer shall entitle the bearer thereof to demand their payment directly, and to obtain an execution on the day any of the subscriptions falls due.

ART. 215. The promissory notes of the landowner or farmer, be they either held by the association or negotiated by the same, shall when they fall due give rise to the execution which may be proper, in accordance with the law of civil procedure, against the property of the landowner or farmer who may have subscribed them.

According to number 5 of article 1429 of the law of civil procedure in force in the Peninsula (1427 of that for Cuba and Porto Rico and 1411 of that for the Philippines).

ART. 216. The interest and commission which the agricultural loan associations and their agents or representatives are to receive shall be unrestrictedly stipulated within the limits fixed by the by-laws.

ART. 217. Agricultural loan associations can not devote to the transactions referred to in paragraphs 2 and 3 of article 212 more than 50 per cent of the common capital, applying the remaining 50 per cent to the loans referred to in number 1 of the same article.

SECTION THIRTEENTH.

Expiration and liquidation of commercial associations.

ART. 218. The partial rescission of the articles of general and limited commercial copartnerships shall be proper in any of the following cases.

1. When a partner makes use of the common capital and of the firm name for private business.

2. When a partner interferes in the management of the company who has no right to do so, according to the conditions of the articles of copartnership.

3. When any partner intrusted with the management commits a fraud in said management or in the bookkeeping of the copartnership.

4. When any partner fails to contribute to the common capital the amount stipulated in the articles of copartnership, after having been requested to do so.

5. When a partner transacts commercial business for his own account, which is not lawful in accordance with the provisions of articles 136, 137, and 138.

6. When a partner who is under the obligation to render personal services to the copartnership absents himself, after having been requested to return and comply with his duties, and does not do so or does not give a good reason which temporarily prevents him from returning.

7. When one or more partners do not comply, in any manner whatsoever, with the obligations imposed in the articles of copartnership.

With regard to number 5, see the articles referred to; and with regard to the whole of this article see the regulations for the organization and management of commercial registries.

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ART. 219. The partial rescission of the copartnership will produce the annulment of the articles in so far as the responsible partner is concerned, who shall be considered as excluded therefrom, requiring him to pay the amount of the loss which may correspond to him, should there be any, and the copartnership shall be authorized to retain, without allowing him to participate in the profits nor giving him any indemnification, the funds he may have contributed to the common capital, until all the transactions pending at the time of the rescission have deen concluded and liquidated.

ART. 220. The liability of the partner excluded as well as that of the copartnership for all acts and obligations contracted in the name and for the account of the latter, with regard to third persons, shall continue until the record of the partial rescission of the articles of copartnership has been made in the commercial registry.

According to number 6 of article 38 of the registry regulations, it is the obligation of associations to record their partial rescission, as well as their complete dissolution, except when said dissolution takes place on account of the termination of the period for which it was established, in which case said record is optional.

The supreme court laid down, in an opinion of March 23, 1885, that the dissolution of a copartnership by the will of the partners which is not entered in the registry can not prejudice third persons.

ART. 221. Associations of any kind whatsoever shall be completely dissolved for the following reasons:

1. The termination of the period fixed in the articles of association or the conclusion of the enterprise which constitutes its purpose.
2. The entire loss of the capital.
3. The failure of the association.

Observe articles 223 and 226 of this code.

ART. 222. General and limited copartnerships shall furthermore be totally dissolved for the following reasons:

1. The death of one of the general partners if the articles of copartnership do not contain an express agreement that the heirs of the deceased partner are to continue in the copartnership, or an agreement to the effect that said copartnership will continue between the surviving partners.
2. The insanity of a managing partner or any other cause which renders him incapable of administering his property.
3. The failure of any of the general partners.

ART. 223. Commercial associations shall not be considered as extended by the implied or presumed will of the members after the period for which they were constituted has elapsed; and if the members desire to continue in association they shall draw up new articles, subject to all the formalities prescribed for their establishment, according to the provisions of article 119.

ART. 224. In general or limited copartnerships, established for an indefinite period, if any of the partners requests its dissolution, the

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other partners can not oppose it except for reasons of bad faith on the part of the person suggesting it.

It shall be understood that a partner acts in bad faith with regard to the dissolution of the copartnership when he would thereby derive a private profit which he would not receive should the copartnership continue.

ART. 225. A member who retires from a partnership on his own accord or who suggests its dissolution can not prevent pending transactions to be concluded in the manner most convenient to the common interests, and until said transactions are concluded the division of the property and goods of the copartnership shall not take place.

The supreme court in an opinion of May 8, 1861, declared: That although law 11, title 10, *Partida* 5, establishes that a partner may retire from a copartnership without his copartners having the right to prevent him from doing so, even though he retires before the termination of the transaction, or before the time agreed upon, he is liable to the copartnership for any loss or damage which may arise by reason of his unseasonable retirement.

ART. 226. The dissolution of a commercial association, which proceeds from any other cause but the termination of the period for which it was constituted, shall not cause any prejudice to third parties until it has been recorded in the commercial registry.

See article 38, No. 6, of the regulations for the organization and government of the commercial registry.

ART. 227. In the liquidation and division of the common capital the rules established in the articles of association shall be observed, and should there be none, the rules contained in the following articles.

There can not be enforced against an association to which another one has been joined an obligation contracted by the latter long before the fusion took place, and the foregoing article can not be considered as violated thereby. (Opinion of June 21, 1889.)

ART. 228. From the time an association is declared in liquidation the representation of the managing members to make new contracts and obligations shall cease, their powers being limited as liquidators to collecting the credits of the association, to extinguishing the obligations previously contracted as they fall due, and to realizing pending transactions.

The manager of an association in liquidation has the right to demand the fulfillment of the obligations contracted in favor of the same prior to the dissolution. (Opinion of October 12, 1888.)

ART. 229. In general or limited copartnerships, should there be no opposition on the part of any of the partners, the persons who managed the common funds shall continue in charge of the liquidation; but should all the partners not agree thereto a general meeting shall be called without delay, and the decision adopted at the same shall be enforced with regard to the appointment of liquidators from among the members of the association or not, as well as in all that refers to the

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form and proceedings of the liquidation and the management of the common funds.

Although articles of association by their nature require the corresponding liquidation, which must be made at the proper time in order to determine the rights and liabilities of the members, said liquidation must be made by the member who conducted the administration or management, he being the person who can give an account of the management and of the result of the business transacted. (Opinion of October 3, 1894, *Gacetas* of December 12 and 13.)

ART. 230. Under the penalty of removal the liquidators shall—

1. Draw up and communicate to the members, within the period of twenty days, an inventory of the common property, with a balance of the association in liquidation, according to its books.

2. Communicate in the same manner to the members every month the condition of the liquidation.

ART. 231. The liquidators shall be liable to the members for any loss suffered by the common funds on account of fraud or serious negligence in the discharge of their duty, but are not understood hereby as being authorized to transact business nor to compromise the common interests, unless the members have expressly granted them these privileges.

ART. 232. At the conclusion of the liquidation and when the time has come to make the division of the common funds, according to the classification made by the liquidators, or by the meeting of members, which any of whom can request to be held for this purpose, said liquidators shall make the division within the period decided by the meeting.

ART. 233. If any of the members considers himself unjustly treated in the division made, he may make use of his right before the judge or court of competent jurisdiction.

ART. 234. In the liquidation of commercial associations in which minors or incapacitated persons are interested, the father, mother, or guardian of the latter shall act, as may be the case, with full powers, as though a private transaction were involved, and all the proceedings instituted and consented to by said representatives for their principals shall be valid and irrevocable without privilege of restitution and without prejudice to the liability the former may contract with regard to the latter by reason of their carelessness or negligence.

ART. 235. No member can demand the delivery to him of the capital due him from the common funds until all the debts and obligations of the association have been extinguished, or until the amount thereof has been deposited, if the delivery can not at once take place.

An opinion of the said court of March 23, 1885, establishes: That when an association contracts the obligation to pay a certain salary to one of its employees and the former is afterwards dissolved by the will of the members, the association in liquidation is bound to pay said employee his salary until he is notified of the dissolution, as well as interest for the delay in making the payment at the time stipulated.

The opinion which orders that, in accordance with what has been agreed upon, the losses and profits must be distributed when an association is dissolved, does not violate the provisions of the foregoing article. (Opinion of February 12, 1889.)

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ART. 236. There shall be deducted from the first divisions made among the members the sums they may have received for personal expenses or which have been advanced them by the company for any other reason whatsoever.

ART. 237. The private property of the general partners which is not included in the assets of the copartnership when it is established can not be seized for the payment of the obligations contracted by the copartnership until after the common assets have been attached.

ART. 238. In corporations in liquidation, the provisions of their by-laws shall continue to be observed in so far as ordinary or extraordinary general meetings are concerned, as well as with relation to the accounts to be given of the progress of the liquidation, and to resolve upon what may be advisable for the common interests.

TITLE II.

Joint accounts.

ART. 239. Merchants may have an interest in the transactions of other merchants, contributing thereto the amount of capital they may agree upon, and participating in the favorable or unfavorable results of said transactions in the proportion which may be fixed.

The doctrine established by the supreme court in an opinion of January 20, 1865, is applicable to the contents of this article, in which there is stated: The provisions of the code of commerce relating to commercial associations are not applicable to this association, and which provisions establish the manner in which they are to be constituted, the results and obligations they produce, as well as their life, liquidation, etc. And in other opinions of December 7 and 9, 1871, and December 12, 1866: That when an association is established allowing a third person to participate therein, and there are no common agreements between themselves, and no fund by shares is created, which are the characteristics of commercial associations, said association can only be called a joint account association.

According to an opinion of July 11, 1888, an agreement in which one of the contracting parties only contributes capital, and in which there is no manager to direct in his own name and under his own liability the negotiations, can not be called a contract for joint accounts.

ART. 240. Joint accounts shall not be subject, with regard to their formation, to any formality, and may be privately contracted by word or in writing, and their existence may be proved by any of the means accepted in law, in accordance with the provisions of article 51.

With regard to this point, the supreme court established, in an opinion of December 9, 1871, and in others, that although joint accounts are not subject to a fixed form (by word or in writing) it should not be construed to the effect that the other legal rules and provisions proper to the nature of said contracts, and which fix the relations of the members to each other as well as the duties of the latter with regard to the management of the common interests, are not applicable to the same.

ART. 241. In the transactions treated of in the two foregoing articles, no commercial name common to all the participants can be adopted, nor can any further direct credit be made use of except that of the merchant

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who transacts the business and who manages in his own name and under his individual liability.

ART. 242. Persons transacting business with the merchant carrying on the joint business shall only have a right of action against the latter and not against the other persons interested, and the latter, on the other hand, shall have no right of action against the third person who made the transaction with the manager unless said manager formally cedes his rights to them.

ART. 243. The liquidation shall be effected by the manager, and after the transactions have been concluded he shall render a proper account of its results.

In an opinion of December 20, 1882, the supreme court established: That in associations on joint account the person managing the same is the person who is to render the accounts.

TITLE III.

Commercial commissions.

SECTION FIRST.

Agents.

ART. 244. As a commercial commission shall be considered that which involves a commercial act or transaction and in which the principal or the agent is a merchant or commercial broker.

According to an opinion of the supreme court of June 14, 1882, there can not be considered as an act of commercial commission the charge or commission accepted by a person for the sale of the crops of the owner for the account, order, and risk of the same.

ART. 245. The agent may discharge the commission, acting in his own name or in that of the principal.

In an opinion of September 21, 1869, the supreme court established that in order to transact commercial business for account in the capacity of agent a power of attorney contained in a solemn instrument is not necessary, but it is sufficient to have received the commission in writing or by word, although in the latter case it will be necessary to ratify it in writing, according to an opinion of January 17, 1873.

ART. 246. When the agent transacts business in his own name, it shall not be necessary for him to state who is the principal and he shall be directly liable, as if the business were for his own account, to the persons with whom he transacts the same, said persons not having any right of action against the principal, nor the latter against the former, the liabilities of the principal and of the agent to each other always being reserved.

See article 2127 of the law of civil procedure.

The principal may, according to an opinion of the supreme court of October 5, 1881, avoid the obligations imposed on principals by the code of commerce.

The same court, in an opinion of June 30, 1883, stated: That persons transacting business with an agent do not acquire any right of action against the principal for

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the obligations which said agent contracted in his own name, and that when the agent does not act in his own name the principal has a right of action against the persons with whom the former transacted the business intrusted to him, an assignment to him by the said agent not being necessary.

ART. 247. If the agent transacts business in the name of the principal, he must state that fact; and if the contract is in writing, he must state it therein or in the subscribing clause, giving the name, surname, and domicile of said principal.

In the case prescribed in the foregoing article, the contract and the actions arising therefrom shall be effective between the principal and the person or persons who may have transacted business with the agent; but the latter shall be liable to the persons with whom he transacted business during the time he does not prove the commission, if the principal should deny it, without prejudice to the obligation and proper actions between the principal and agent.

ART. 248. In case an agent should refuse the commission intrusted to him, he shall be obliged to communicate his decision to the principal by the quickest means possible, being required in any case to confirm it by the first mail after receiving the commission.

He shall also be obliged to exercise due care in the custody and preservation of the merchandise which the principal may have forwarded to him until the latter appoints a new agent, in view of his refusal, or until, without awaiting a new designation, the judge or court has taken possession of the goods at the request of the agent.

The noncompliance with any of the obligations established in the two foregoing paragraphs shall cause the agent to incur the liability of indemnifying the principal for the loss and damages which may arise.

The word *judge*, which appears at the end of the second paragraph of this article, does not exist in the same article of the code of commerce amended for application in the Philippine Islands.

See, further on, article 623, and also article 2119 of the law of civil procedure for the Peninsula, 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 249. The commission shall be understood as accepted whenever the agent takes any action in the discharge of the commission intrusted to him by the principal which is not limited to the action mentioned in the second paragraph of the foregoing article.

For the application of this article, note the provisions of article 252, which is closely related thereto.

ART. 250. The discharge of commissions requiring the disbursement of funds shall not be compulsory, even though they have been accepted, until the principal places the sum necessary for the purpose at the disposal of the agent.

The agent may also suspend the taking of further action with regard to the commission intrusted to him when, after having made use of the sums received, the principal should refuse to forward the further funds requested by the former.

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ART. 251. If an agreement has been made to advance the funds necessary for the discharge of the commission, the agent shall be obliged to supply them, except in the case of the suspension of payments or bankruptcy of the principal.

ART. 252. The agent who, without legal cause, does not fulfill the commission accepted or the discharge of which he has begun to carry out, shall be liable for all the damages the principal may suffer by virtue thereof.

ART. 253. After a contract has been made by the agent with all the legal formalities, the principal must accept all the consequences of the commission, reserving the right of action against the agent by reason of error or omission committed in its fulfillment.

ART. 254. The agent who, in the discharge of his commission acts in accordance with the instructions received from the principal, shall be exempted from all liability to the same.

With regard to this point, in an opinion of November 27, 1867, the supreme court stated: That even though an agent be empowered to act in the manner he may deem most convenient, he shall not thereby be relieved of the duty of giving to his principal, in the manner agreed upon or possible, notice of the conditions or circumstances which influence his decision, in order that the former may ratify the authorization and give him new instructions with full information. In another opinion of June 3, 1870: That an agent must submit to the instructions he receives from the principal, and thus shall not incur liability, and therefore if an agent does not receive an express order to deliver certain goods before a declaration of suspension of payments he does not incur liability.

The same court, in opinions of June 8, 1870, May 27, 1871, and December 27, 1875, declared: That all the acts executed by an agent personally or through his correspondents must be in accordance with the instructions received from the principal, and if he acts in this manner he shall be exempted from all liability for the accidents and results which may arise in the transaction.

ART. 255. In so far as matters not expressly foreseen and provided for by the principal are concerned, the agent shall consult him, provided this is permitted by the nature of the business.

But should said agent be authorized to proceed according to his judgment, or the consultation be not possible, he shall proceed with prudence and in accordance with commercial customs, acting in the business as if it were his own. Should an unforeseen accident make the execution of the instructions received hazardous or prejudicial, in the judgment of the agent, he may suspend the fulfillment of the commission, communicating the reasons for his action to the principal by the speediest means of communication.

ART. 256. In no case shall the agent proceed against an express order of the principal, being liable for all the losses and damages he may occasion by reason thereof.

Similar liability shall be incurred by an agent in cases of malice or of abandonment.

ART. 257. An agent shall always be liable for the cash he may have in his hands by reason of the commission.

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ART. 258. An agent who, without express authorization of the principal, should transact some business at prices or conditions which are more onerous than the current market rates on the date on which it took place, shall be liable to the principal for the loss he may have caused him thereby, the statement that he made transactions at the same time for his own account under similar circumstances not being admissible as an excuse.

ART. 259. An agent must observe the provisions contained in the laws and regulations with regard to the transaction which has been intrusted to him, and shall be liable for the results of their violation or omission. If he acted in virtue of the express order of the principal, the liabilities which may arise shall be incurred by both conjointly.

ART. 260. The agent shall frequently communicate to the principal the information which may be of importance to a successful result of the transaction, informing him of the contracts he may have executed by the mail of the same or of the next day on which they took place.

ART. 261. The agent shall personally discharge the commissions he may receive, and can not delegate them without the prior consent of the principal unless he has been previously authorized to make the delegation; but he may under his liability make use of his employees in the routine transactions which, according to general commercial customs, are intrusted to the same.

ART. 262. If the agent should have made a delegation or substitution with the authority of the principal he shall be liable for the acts of the substitute, if the person to whom the business was delegated was selected by him, being otherwise released from liability.

ART. 263. An agent is required to render, in accordance with his books, a specific and proper account of the amounts he received for the commission, returning to the principal, at the time and in the manner prescribed by him, the surplus which appears in his favor.

In case of tardiness he shall pay the legal rate of interest.

The loss of surplus funds shall be suffered by the principal, provided the agent has observed the instructions of the former with regard to their return.

ART. 264. An agent who, having received funds to discharge a commission, invests them in or uses them for a purpose other than that of the commission, shall pay the constituent the principal and its legal interest, and shall be liable from the date on which he received the same, for the loss and damage caused by reason of noncompliance with the commission, without prejudice to the criminal action which may be proper.

In accordance with article 548, case number 5 of the penal code of 1870, persons who appropriate or divert money, goods, or any other personal property they may have received on deposit, commission, etc., are guilty of fraud.

ART. 265. The agent shall be liable for the goods and merchandise he may receive, in the terms and with the conditions and descriptions he

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has been informed of in the consignment, unless he proves, in receiving the same, the averages and deterioration it has suffered, comparing its condition with the contents of the bill of lading or charter or of the instructions received from the principal.

With regard to the manner of proving the averages or deterioration referred to in the above article, see the provisions of the law of civil procedure (article 2127 of that for the Peninsula, 2088 of that for Cuba and Porto Rico, and 2048 of that for the Philippines).

ART. 266. An agent who has in his possession merchandise or goods for the account of another person, shall be liable for their preservation in the condition in which he received the same. This liability shall cease when their destruction or impairment is due to accidental cases, force majeure, lapse of time, or by a defect in the article.

In cases of total or partial loss on account of lapse of time or defect in the article, the agent shall be obliged to prove the impairment of the merchandise in a legal manner, informing the principal thereof as soon as it is observed.

See the articles of the law of civil procedure referred to in the foregoing addition.

ART. 267. No agent shall purchase for himself nor for another person what has been given him to sell, nor shall he sell what he has been requested to purchase, without the permission of the principal.

He shall furthermore not be permitted to change the marks on the goods he may have purchased or sold for the account of another.

According to an opinion of January 14, 1888, the marks placed on merchandise which remains in the possession of the seller are an explanatory sign of what has been agreed to and which determines the manner in which the article has been acquired by the seller.

ART. 268. Agents can not handle goods of the same kind belonging to different parties, bearing the same mark, without distinguishing them by a countermark, in order to avoid confusion and for the purpose of designating the respective property of each principal.

ART. 269. If the goods intrusted to an agent should suffer some change, making their sale urgent in order to save as much as possible of their value, and the haste were such that there is no time to advise the principal and await his orders, the agent shall apply to the judge or court of competent jurisdiction, who shall authorize the sale with the formalities and precautions he may consider most beneficial to the principal.

With reference to a better understanding and application, in a proper case, of the foregoing article, see rule 1 of article 809, articles 810, 850, et seq., of this code, and article 2161 of the law of civil procedure in force in the Peninsula, 2122 of the same code amended for Cuba and Porto Rico, and 2088 of that for the Philippines.

ART. 270. An agent can not, without authority from the principal, loan or sell on credit or on time, the principal being permitted in such cases to require cash payment of the agent, leaving him any interest, profit, or advantage which may arise from said credit on time.

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ART. 271. If an agent, with the due authorization, sells on time, he must so state it in the account or in the communication to the principal, informing him of the names of the purchasers; and should he not do so, the sale shall be considered as made for cash, in so far as the principal is concerned.

ART. 272. If an agent receives for a sale besides the ordinary commission a commission called a guaranty commission, the risks of the collection shall be for his account, being obliged to pay the principal the products of the sale at the same periods as agreed upon with the purchaser.

ART. 273. An agent who does not make the collection of the credits of his principal at the period they are demandable, shall be liable for the losses arising from his commission or delay unless he proves that he at the proper time made use of the legal remedies to recover the payment.

ART. 274. An agent who is intrusted with the expedition of merchandise, and who has received orders to insure the same, shall be liable, should he not do so, for the damage said merchandise may suffer, provided the funds necessary for the payment of the premium have been furnished, or provided he has obligated himself to advance them and should not have immediately advised the principal of his impossibility to do so.

If during the risk the underwriter is a declared bankrupt it shall be the duty of the agent to renew the insurance, unless the principal has given him orders to the contrary.

ART. 275. An agent who as such is to forward merchandise to another point, shall make the transportation contract, complying with the obligations which are imposed on shippers in land and maritime transportations.

Should he make the contract for transportation in his own name when he is acting for another, he shall be liable to the carrier for all the obligations imposed on shippers in land and maritime transportations.

ART. 276. Merchandise forwarded on consignment shall be understood as specially bound to the payment of the commission fees, advances, and expenses he may have made on account of its value or proceeds.

As a consequence of this obligation:

1. No agent can be dispossessed of the merchandise he receives on consignment until he is previously reimbursed for his advances, expenses, and commission charges.

2. The agent must be paid from the proceeds of said merchandise, or must be preferred over the other creditors of the principal, with the exception of the provisions of article 375.

In order to enjoy the preference mentioned in this article, it shall be a necessary condition that the merchandise be in the possession of the consignee or agent, or that it is at his disposal in a public store or warehouse, or that the shipment was made consigned to his name, the

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bill of lading, stub, or transportation contract having been received signed by the carrier.

In confirming the precept of the foregoing article, the supreme court, in an opinion of July 9, 1881, declared: That an agent has a preferred right in the collection of his expenses, commission, and advances before any other creditor, but in no case before the owner of the merchandise not paid for, who exercises his right of ownership.

ART. 277. The principal shall be obliged to pay the agent the commission premium, unless there is an agreement to the contrary.

Should there be no agreement with regard to the brokerage, the latter shall be fixed in accordance with the commercial practices and customs of the market where the commission is fulfilled.

ART. 278. The principal shall furthermore be obliged to pay the agent cash, after receiving a proper account, for his expenses and disbursements, with legal interest from the day they took place until they have been fully repaid.

According to an opinion of the supreme court of June 18, 1857, there is due the agent, according to note No. 4, title 3, book 9 of the "Novisima Recopilación," the value, exchange, reexchange, interest, and other expenses connected with bills of exchange; and in accordance with another opinion of February 26, 1881, the fact that a principal is not bound by the acts of the agent outside of the authorization granted him does not deserve the appellation of legal doctrine in commercial matters.

ART. 279. The principal may revoke the commission intrusted to an agent at any stage of the transaction, advising him thereof, but always being liable for the result of the transactions which took place before the latter was informed of the revocation.

Although the provisions of articles 279 and 291 authorize a principal to revoke the power given an agent, provided he informed the latter thereof, the former being liable for the result of the transaction which took place before making known the revocation, in order that the latter may have its legal effects the provisions of article 21, No. 6, articles 29 and 290 of said code must be complied with. (Opinion of February 13, 1895. *Gaceta* of June 22.)

ART. 280. A contract shall be rescinded by the death of the agent or by his incapacity; but it shall not be rescinded by the death or incapacity of the principal, although it may be revoked by his representatives.

SECTION SECOND.

Other forms of commercial commissions—Factors, employees, and shop clerks.

ART. 281. A merchant may constitute general or special attorneys or agents for the purpose of transacting business in his name and for his account in whole or in part, or for the purpose of assisting him therein.

According to doctrine established by the supreme court in an opinion of November 9, 1877, the articles of the code of commerce are not applicable to the relations between the Bank of Spain and the director of one of its branches, because such officials can not be called factors.

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ART. 282. A factor must have the qualifications necessary to obligate himself in accordance with this code, and a power of attorney from the person in whose name he transacts the business.

The power of attorney referred to in the above article, which must appear in a public instrument in order that it may be effective against third persons, must be recorded in the commercial registry in accordance with the provisions of number 6, of article 21 of this code, and of articles 31 and No. 2 of article 38 of the regulations for the organization and management of said registry.

ART. 283. The manager of an enterprise or manufacturing or commercial establishment for the account of another, authorized to administer it, direct it, and to transact business relating thereto, with more or less powers, as the owner may have considered advisable, shall have the legal qualifications of a factor, and the provisions contained in this section shall be applicable to him.

The supreme court established, in an opinion of October 16, 1861, that a commercial factor authorized by a general power of attorney has powers in all that relates to the branch of commerce he is engaged in, with the exception of any limitations.

ART. 284. The factors shall transact business and make contracts in the names of their principals, and in all instruments which they subscribe as such they shall state that they do so by virtue of a power of attorney or in the name of the person or association they represent.

Factors, according to an opinion of the supreme court of October 28, 1867, in transacting business or making contracts in the name of their principals and in business belonging to the same, must state in the instruments they subscribe that they do so by virtue of a power of attorney from the persons they represent, and even though they do not state this fact, it must be understood that contracts made by the former are for the account of the principal, and that therefore the obligations are incurred by the latter, if said contracts involved objects corresponding to the business or traffic of the establishment.

ART. 285. When factors transact business in the manner prescribed in the foregoing article, the obligations they may contract shall be incurred by the principals.

Any claim to compel them to fulfill said obligations shall be brought against the property of the principal's establishment or enterprise and not against the property of the factors, unless it is confounded with that of the former.

According to the contents of an opinion of October 5, 1881, a principal can not exempt himself from the obligations imposed upon him by the contracts made by the factor, when the latter acts within the scope of the privileges granted him by the power of attorney and in questions proper to the business intrusted to him.

ART. 286. Contracts made by the factor of a manufacturing or commercial establishment or enterprise, when it is common knowledge that he belongs to a well-known enterprise or association, shall be understood as made for the account of the owner of said enterprise or association, even though the factor did not mention this fact at the time of making the contract; or that breach of trust, transgression of powers, or appropriation of the goods, which are the subject of the contract is

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alleged, provided these contracts involve objects included in the transactions or business of the establishment, or if, not being of this kind, it should be proven that the factor acted according to orders from his principal, or that the latter approved his action in express terms or by positive acts.

ART. 287. A contract made by a factor in his own name shall bind him directly with the person with whom it was made; but if the transaction was made for the account of the principal, the other contracting party may bring his action against the factor or against the principal.

ART. 288. Factors can not transact business for their own account, nor interest themselves in their own name or in that of another person, in negotiations of the same character as those they are engaged in for their principals, unless the latter expressly authorize them thereto.

Should they negotiate without this authorization, the profits of the negotiation shall be for the principal and the losses for the account of the factor.

If the principal has granted the factor authorization to make transactions for his own account or in union with other persons, the former shall not be entitled to the profits, nor shall he participate in the losses which may be suffered.

If the principal has permitted the factor to take part in some transaction, the participation of the latter in the profits shall be, unless there is an agreement to the contrary, in proportion to the capital he may have contributed; and should he not have contributed any capital, he shall be considered a working partner.

ART. 289. The fines which a factor may incur by reason of violations of the fiscal laws and regulations of the public administration in his management as factor shall be immediately enforced against the property he manages, without prejudice to the right of the principal against the factor for his guilt in the acts which gave rise to the fine.

ART. 290. The powers of attorney granted a factor shall be considered in force until they are expressly revoked, notwithstanding the death of the principal or of the person from whom they were received in due form.

ART. 291. The acts and contracts made by the factor shall be valid with regard to his constituent, provided they are prior to the time the former is informed by legitimate means of the revocation of the powers of attorney or of the alienation of the establishment.

They shall also be valid with regard to third persons, until the provisions of number 6 of article 21 have been fulfilled, with regard to the revocation of the powers of attorney.

Article 31 and No. 2 of article 38 of the commercial registry regulations, as well as No. 6 of the article referred to, supplement the provisions of this article.

See the doctrine of the opinion of February 13, 1895, in the addition to article 279.

ART. 292. Merchants may intrust to other persons besides the factors the constant management, in their name and for their account, of one or more of the branches of the business they are engaged in by virtue of a written or verbal agreement, associations including such

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agreements in their by-laws, and private parties making them known by public notices or by means of circulars to their correspondents.

The acts of these special employees or agents shall only bind the principal with regard to the transactions proper to the branch of business which has been intrusted to them.

ART. 293. The provisions of the foregoing article shall also be applicable to commercial shop clerks who are authorized to manage a commercial transaction or some branch of the business of their principal.

ART. 294. Shop clerks intrusted with selling at retail in a public store shall be considered authorized to collect the amounts of the sales they may effect, and their receipts shall be valid, being issued in the name of the principals.

The same power shall be enjoyed by shop clerks who sell in wholesale stores, provided the sales are for cash and that the payment therefor is made in the said store; but when the collections are to be made outside of the same, or when they proceed from sales made on time, the receipts must necessarily be signed by the principals or by their factors, or by an agent legally authorized to make collections.

ART. 295. When a merchant intrusts a shop clerk with the receipt of merchandise and the latter receives it without making any remarks with regard to its quantity or quality, its reception shall have the same effects as though received by the principal.

ART. 296. Without the consent of their principals, neither factors nor shop clerks of commerce may delegate to others the commissions they receive from the former; and should they do so without said consent, they shall be directly responsible for the actions of the substitutes and for the obligations contracted by the latter.

ART. 297. Factors and shop clerks of commerce shall be liable to their principals for any damage they may cause their interests by reason of having proceeded in the discharge of their duties with malice, negligence, or violation of the orders or instructions they may have received.

ART. 298. If, by reason of the service he is rendering, a shop clerk of commerce should incur some extraordinary expense or should suffer some loss regarding which there was no express agreement between him and his principal, the latter shall be the one to indemnify him for the loss suffered.

ART. 299. If the contracts between the merchants and their shop clerks and employees should have been made for a fixed period, none of the contracting parties shall be allowed to violate the terms of the contract until the termination of the period agreed upon.

Persons violating this clause shall be subject to indemnify the loss and damage suffered, with the exception of the provisions contained in the following articles.

The text of this article amended for the Philippine Islands, as published in the *Gaceta de Madrid*, states *in the following article.*

According to an opinion of the supreme court of April 26, 1871, contracts between shop clerks and their principals must be governed by the agreements between the contracting parties, and only by the provisions of articles 197 et seq. of the code of commerce (article 299 of this code) when there is no express stipulation with regard to the point in controversy.

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ART. 300. The following shall be special reasons for which principals may discharge their employees, even though the time of service of the contract has not elapsed:

1. Fraud or breach of trust in the business intrusted to them.

2. The transaction of some commercial business for their own account without the express knowledge and consent and permission of the principal.

3. Serious disrespect and lack of consideration to said principal or to members of his family or establishment.

ART. 301. The following shall be reasons for which employees may leave the service of their principals, even though the time of their contract of service has not elapsed:

1. Nonpayment of the salary or remuneration agreed upon at the times fixed.

2. Noncompliance with any of the other conditions agreed upon in favor of the employee.

3. Bad treatment or serious offenses on the part of the principal.

ART. 302. In cases in which no special time is fixed in the contracts of service, any one of the parties thereto may dissolve it, advising the other party thereof one month in advance.

The factor or shop clerk shall be entitled, in such case, to the salary due for said month.

TITLE IV.

COMMERCIAL DEPOSITS.

ART. 303. In order that a deposit may be considered commercial, it is necessary—

1. That the depositor, at least, be a merchant.

2. That the wares deposited be commercial objects.

3. That the deposit constitute in itself a commercial transaction, or be made by reason of commercial transactions.

See articles 193 et seq. and their respective additions.

The opinion of the supreme court of March 4, 1881, confirming in part the provisions of number 3 of this article, established: That a deposit can not be considered a commercial deposit the object of which is not a commercial transaction, and therefore commercial provisions are not applicable thereto.

ART. 304. The depositary shall have a right to demand compensation for the deposit, unless there is an express agreement to the contrary.

If the contracting parties have not fixed the amount of the compensation, it shall be determined according to the current rates in the locality where the deposit was made.

ART. 305. The deposit shall be consummated by the delivery to the depositary of the article in question.

ART. 306. The depositary is obliged to preserve the article deposited in the manner he receives it, and return it with its increase, should there be any, when the depositor requests it of him.

In the preservation of the deposit the depositary shall be liable for the injury and damage the articles deposited may suffer by reason of

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his malice or negligence, and also for those arising from the nature or defects of the articles, if he should not in the latter cases personally have done all that was possible in order to avoid or remedy them, furthermore notifying the depositor immediately upon their appearing.

ART. 307. When the deposits consist of cash with a specification of the currency constituting the same, or when they are delivered, sealed, or closed, the increase or reduction in value suffered by the same shall be for the account of the depositor.

The risks of such deposits shall be run by the depositary, and he shall also be liable for any injury they may suffer unless he proves that they were caused by force majeure or by an insurmountable accidental case.

When the deposits of cash are made without a specification of the currency or without being closed or sealed, the depositary shall be liable for its preservation and risks in the manner established in the second paragraph of article 306.

ART. 308. The depositaries of bonds, securities, certificates, or instruments which earn interest are obliged to collect the same when they fall due, as well as to take the steps necessary in order that the securities deposited may preserve their value and the rights corresponding to the same according to legal provisions.

ART. 309. Whenever, with the consent of the depositor, the depositary disposes of the articles on deposit either for himself or for his business, or for transactions intrusted to him by the former, the rights and obligations of the depositary and of the depositor shall cease, and the rules and provisions applicable to the commercial loans, commission, or contract which took the place of the deposit shall be observed.

A person receiving articles on deposit which can be counted, such as notes of the Spanish Bank of Habana (Banco Español de la Habana) are obliged to return the same or a similar number, and should this not be possible the value of the same at the time they are to be returned, in accordance with laws 2, title 3, and 3 and 8, title 1, *Partida* 5, with the doctrine of which the article we annotate and article 312 of this code are in harmony. (Opinion of July 9, 1889.)

ART. 310. Notwithstanding the provisions of the foregoing articles, deposits made with banks, with general warehouses, with loan or any other associations, shall be governed in the first place by the by-laws of the same, in the second by the provisions of this code, and finally by the rules of common law, which are applicable to all deposits.

TITLE V.

COMMERCIAL LOANS.

SECTION FIRST.

Commercial loans.

ART. 311. A loan shall be considered commercial when the following conditions are present:

1. That one of the contracting parties is a merchant.
2. If the articles loaned are destined to commercial transactions.

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ART. 312. If the loan consists of money, the debtor shall pay it by returning an amount equal to that received, in accordance with the legal value the money may have at the time of the return, unless there was an agreement with regard to the kind of money in which the payment was to be made, in which case the fluctuations in value shall be lost or taken advantage of by the lender.

In loans of bonds or securities the debtor shall pay by returning the same number of the same kind and same conditions, or their equivalents if the former have been done away with, unless there is an agreement to the contrary.

If the loans are in kind the debtor must return, unless there is an agreement to the contrary, a similar amount in the same kind and quality, or its equivalent in cash if the kind due should be done away with.

See the note to article 309 of this code.

ART. 313. In loans for an indefinite period, or in which no due time has been fixed, payment can not be demanded of the debtor until thirty days have elapsed, to be counted from the date of the notarial demand which may have been made.

ART. 314. Loans shall not pay any interest unless there is an agreement to that effect in writing.

Similar provisions are in force with regard to loans according to the civil law.

ART. 315. The interest of the loan may be agreed upon without any established rate or limitation whatsoever.

Any agreement made in favor of the creditor shall be considered as interest.

The provisions of this article have conformed this code with the law which prescribes the abolition of an established rate of interest.

ART. 316. Debtors who delay the payment of their debts after the same have fallen due, must pay, from the day following that on which it became due, the interest agreed upon in such case, or in the absence of such agreement, the legal interest.

If the loan is in kind, in order to compute the interest, its value shall be graduated by the prices of the merchandise loaned in the locality in which the return is to be made, on the day following that on which it falls due, or by the value fixed by experts if the merchandise should no longer exist at the time its appraisement is to be made.

And if the loan consists of bonds or securities, the interest, by reason of delay in repayment, shall be that earned by said securities or bonds, or in the absence thereof, the legal rate of interest, the value of the securities being determined by their price on exchange, if they are subject to quotation, or at their current prices on the day following that on which they fall due.

According to an opinion of the supreme court of January 18, 1881, the effects of delay in the fulfillment of commercial obligations do not commence until the creditor institutes judicial proceedings against the debtor, or requests payment through a notary or other public official.

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ART. 317. Interest which has fallen due and has not been paid shall not earn interest. The contracting parties may, however, capitalize the net interest which has not been paid, which, as new principal, shall earn interest.

ART. 318. The receipt of the principal by the creditor without an express reserve of the right to the interest agreed upon or due shall extinguish the obligation of the debtor with regard to the same.

Payments on account, when there is no express stipulation with regard to their application, shall first be applied to the payment of interest as it falls due and then to the principal.

ART. 319. After an action has been brought the accrued interest can not be added to the principal for the purpose of demanding greater interest.

SECTION SECOND.

Loans guaranteed by public bonds or securities.

ART. 320. A loan with a guaranty of securities quoted on exchange, contained in an instrument with the intermediation of licensed agents, shall always be considered commercial.

The lender shall have, on the public bonds or securities pledged in accordance with the provisions of this section, a right to collect his credit with preference over other creditors, who can not remove said securities from his possession unless they satisfy the loan made on the same.

The supreme court, in an opinion of July 11, 1881, stated: That loans guaranteed by public securities are exchange transactions, which are made with the intermediation of stockbrokers, although the law does not require that this kind of transactions take place or be published in the building of the exchange; and in another opinion, of October 15, 1874: That in a loan with a security the creditor may hold the latter, when they are public or commercial securities rated by a broker, without making an agreement due on a day certain.

See article 918 of this code.

The instruments constituting loans guaranteed by public bonds or securities must necessarily be executed on the stamped instruments issued for the purpose by the State. There are excepted therefrom, however, instruments for loans employed by pawnshops, banks, and associations legally established, who previously request it of the provincial offices of the respective treasury, which may be stamped on the special forms which they may present.

The scale governing the amount of the stamp in these cases see in article 21 of the law in force of September 15, 1892.

See the addition to the following article.

ART. 321. The rights of preference, treated of in the foregoing article, shall only be had on the same securities which constituted the guaranty; for which purpose, if said guaranty consisted of instruments payable to bearer, their numbers shall be stated in the instrument constituting the contract, and if it consists of stock or transferable securities, the transfer shall be made to the lender, stating in the instrument,

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besides the circumstances necessary to prove the identity of the guaranty, that the transfer does not include the conveyance of ownership.

The preference treated of in this article, as well as in the foregoing one, can only be legally made use of by the holders of securities acquired after April 4, 1893, when they prove, with the exhibition of the corresponding instrument, that they have paid the tax established in the third paragraph, basis 2, of the law of June 30, 1892. Said impost consists of a tax of .10 per cent on the value of transfers of public securities, commercial and industrial bonds, merchandise, shares in mines, and personal loans which exceed 1,000 pesetas, those involving smaller amounts paying only .05 per cent of their value. (Royal decree of April 4, 1893. *Gaceta* of the 6th.)

ART. 322. At the will of the persons interested instead of the numeration of securities payable to bearer, they may be deposited in the public establishment determined in the exchange regulations.

Neither the public treasury nor the Bank of Spain and its branches can receive the securities referred to in the article we annotate and in article 37 of the general exchange regulations until it is first proved that the payment of the tax on property rights and transfer of property has been made. (Royal decree of April 4, 1893. *Gaceta* of the 6th.)

See article 37 of the exchange regulations in force.

ART. 323. After the period for which the loan was contracted has elapsed, the creditor, unless there was an agreement to the contrary, and without necessity of notifying the debtor, shall be authorized to request the alienation of the securities, for which purpose he shall present them, with the instrument constituting the loan, to the board of directors, which, after finding their numeration correct, shall convey them to the amount necessary through a licensed agent, on the same day if it be possible, and otherwise on the next.

A lender can only make use of the said right during the hours of the exchange of the day following that on which the debt fell due.

ART. 324. Securities which are quoted on exchange, payable to bearer, pledged in the manner fixed in the foregoing articles, shall not be subject to return until the lender has been reimbursed, without prejudice to the rights and actions of the dispossessed owner against the persons liable according to the laws, for the acts by virtue of which he has been deprived of the possession and ownership of the securities given as a guaranty.

TITLE VI.

PURCHASE AND SALE AND COMMERCIAL EXCHANGES AND TRANSFERS OF NONNEGOTIABLE CREDITS.

SECTION FIRST.

Purchase and sale.

ART. 325. A purchase and sale of personal property for the purpose of resale, either in the form purchased or in a different form, for the purpose of deriving profit in the resale, shall be considered commercial.

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The importance which enterprises managed by private parties or by commercial associations have attained, the purpose of which is the purchase of land with the object of reselling it in small lots or after building thereon, purchases and sales which constitute true commercial transactions, is the reason why this code does not classify them as commercial or not, leaving the courts at liberty to classify them as either, in view of the circumstances.

The purchase of oil used for the purposes of manufacturing soap for sale is a commercial transaction.

ART. 326. The following can not be considered commercial:

1. The purchase of goods destined for the consumption of the purchaser or of the person for whom they are bought.

2. Sales made by owners and by farmers or cattlemen of the fruits or products of their crops or cattle, or of the goods in which their rents are paid them.

3. Sales made by artificers in their workshops of the articles constructed or manufactured by them.

4. The resale made by any person who is not a merchant, of the remainder of the stock he laid in for his own consumption.

ART. 326. If the sale takes place by samples or by a fixed quality known in commerce, the purchaser can not refuse to receive the articles contracted for, if they are in accordance with the samples or quality mentioned in the contract.

In case the purchaser refuses to accept them, experts shall be appointed by both parties, who shall decide whether their reception is proper or not.

If the experts should declare that the articles are to be received, the sale shall be considered as consummated, and in a contrary case the contract shall be rescinded, without prejudice to the indemnification to which the purchaser may be entitled.

As a doctrine to be applied to contracts in general, the supreme court established in an opinion of July 7, 1883, that a contract of purchase and sale, being essentially mutual, is perfect and binding by the simple agreement of the contracting parties to the article and to the price. However, in order to apply this principle to commercial contracts, it shall be understood that the article is to be seen or be known by the purchaser, as prescribed in the following article:

ART. 328. In the purchase of goods which are not seen or can not be classified by a fixed quality and well known in commerce it shall be understood that the purchaser reserves the privilege of examining them and unrestrictedly rescinding the contract if the goods do not suit him.

The purchaser shall also be entitled to rescind said contract if he reserved the right by an express agreement to examine the goods contracted for.

ART. 329. If the vendor does not deliver the goods sold at the time stipulated, the purchaser may request the fulfillment or the rescission of the contract, with damages in either case for the loss he may have suffered by reason of the delay.

ART. 330. In contracts in which the delivery of a certain amount of merchandise is stipulated within a certain time, the purchaser shall

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not be obliged to receive part of said amount even on the promise of delivering the balance; but if he accepts the partial delivery the sale shall be consummated with regard to the goods received, reserving the right of the purchaser to demand for the rest the fulfillment of the contract or its rescission, in accordance with the foregoing article.

ART. 331. The loss or impairment of the goods before their delivery, on account of unforeseen accidents or without the fault of the vendor, shall entitle the purchaser to rescind the contract, unless the vendor has constituted himself the depositary of the merchandise, in accordance with article 339, in which case his liability shall be limited to that arising by reason of the deposit.

ART. 332. If the purchaser refuses without just cause to receive the goods bought, the vendor may demand the fulfillment or rescission of the contract, depositing the merchandise in court in the first case.

The same judicial deposit may be made by the vendor whenever the purchaser delays in taking charge of the merchandise.

The expenses arising from the deposit shall be defrayed by the person who caused said deposit to be made.

With regard to the procedure to be observed for the deposit in court referred to in this article, see title 2 of the second part of book 3 of the law of civil procedure, articles 2119 et seq. of that for the Peninsula, 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 333. The damages and impairment suffered by merchandise after the contract has been consummated and the vendor has the goods at the disposal of the purchaser in the place and at the time agreed upon, shall be suffered by the purchaser, except in cases of carelessness or negligence on the part of the vendor.

ART. 334. The damages and impairment suffered by merchandise, even though it be by reason of an accidental case, shall be for the account of the vendor in the following cases:

1. If the sale took place by number, weight, or measure, or if the article sold is not fixed and determined, with marks and signs which identify it.

2. If by reason of an express agreement or the usages of commerce, in view of the nature of the article sold, the purchaser has the privilege to previously examine and investigate it.

3. If the contract contains a clause to the effect that the delivery is not to be made until the article sold has acquired the conditions stipulated.

ART. 335. If the merchandise sold should perish or deteriorate and said loss is to be suffered by the vendor, he shall return to the purchaser the amount of the price he may have received.

ART. 336. A purchaser who, at the time of receiving the merchandise, fully examines the same, shall not have a right of action against the vendor, alleging a defect in the quantity or quality of the merchandise.

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A purchaser shall have a right of action against a vendor for defects in the quantity or quality of merchandise received in bales or packages, provided he brings his action within the four days following its receipt, and that the average is not due to accident or to nature of the merchandise or to fraud.

In such cases the purchaser may choose between the rescission of the contract or its fulfillment in accordance with what has been agreed upon, but always with the payment of the damages he may have suffered by reason of the defects or faults.

The vendor may avoid this claim by demanding when making the delivery that the merchandise be examined fully by the purchaser with regard to the quantity and quality thereof.

See, with regard to the examination of commercial goods, article 2119 of the law of civil procedure for the Peninsula, article 2080 of that amended for Cuba and Porto Rico, and article 2040 of that for the Philippines.

ART. 337. If the period for the delivery of the merchandise sold has not been stipulated, the vendor must have it at the disposal of the purchaser within twenty-four hours after the contract.

ART. 338. The expenses of the delivery of merchandise in commercial sales shall be defrayed by the vendor until said merchandise is placed at the disposal of the purchaser, weighed or measured, unless there is any agreement to the contrary.

The expenses arising from the receipt and removal of the merchandise from the place of delivery shall be defrayed by the purchaser.

ART. 339. After the merchandise sold has been placed at the disposal of the purchaser and after the latter has stated his satisfaction, or if said merchandise is judicially deposited in the case foreseen in article 332, the obligation of the purchaser to pay the price of the same in cash or at the periods agreed upon with the vendor shall begin.[1]

The vendor shall constitute himself the depositary of the goods sold, and shall be obliged to care for and preserve them in accordance with the laws governing deposits.

ART. 340. During the time the articles sold are in the possession of the vendor, even though they be in the capacity of deposit, the latter shall have preference to the same over any other creditor to obtain the payment of the price with the interest arising from the delay.

ART. 341. The delay in the payment of the article purchased shall obligate the purchaser to pay the legal rate of interest on the amount he owes the vendor.

ART. 342. A purchaser who has not made any claim based on the inherent defects in the article sold, within the thirty days following its delivery, shall lose all rights of action against the vendor for such defects.

[1] In the article amended for the Philippines, as published in the *Gaceta de Madrid*, the article "the" does not exist before *periods*.

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ART. 343. The amounts which, by way of guaranty, are delivered in commercial sales shall always be considered as paid on account of the price and as a proof of the ratification of the contract, unless there is an agreement to the contrary.

ART. 344. Commercial sales shall not be rescinded by reason of damage; but the contracting party who acted with malice or fraud, in the contract or in its fulfillment, shall indemnify for loss and damage, without prejudice to the criminal action which may be proper.

ART. 345. In all commercial sales the vendor shall be obliged to legally defend the title to the articles sold to the purchaser, and to indemnify him for any prejudice he may suffer by being disturbed in his possession of the same.

SECTION SECOND.

Exchanges.

ART. 346. Commercial exchanges of goods shall be governed by the same rules as are prescribed in this title for purchase and sale, in so far as they are applicable to the circumstances and conditions of said contracts.

SECTION THIRD.

Transfers of nonnegotiable credits.

ART. 347. Commercial credits, which are not negotiable nor payable to the bearer, may be transferred by the creditor without requiring the consent of the debtor, it being sufficient that the transfer be communicated to him.

The debtor shall be obligated to the new creditor by virtue of the notification, and from the time said transfer is made the only legitimate payment shall be considered that made to the latter.

ART. 348. The conveyer shall answer for the legality of the credit and for the capacity in which he made the transfer; but he shall not answer for the solvency of the debtor, unless there is an express agreement requiring him to do so.

TITLE VII.

Commercial contracts for transportation overland.[1]

ART. 349. A contract for all kinds of transportation overland or river shall be considered commercial—

1. When it involves merchandise or any commercial goods.

2. When, no matter what his object may be, the carrier is a merchant or customarily is engaged in transporting goods for the public.

With regard to number 1 see article 2119 of the law of civil procedure for the Peninsula, article 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

[1] See the statement of reasons which Mr. Alonso Martinez attached to his project in the portion relating to these contracts.

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ART. 350. The shipper as well as the carrier of merchandise and goods may mutually demand of each other the issue of a bill of lading in which there shall be stated—

1. The name, surname, and domicile of the shipper.
2. The name, surname, and domicile of the carrier.
3. The name, surname, and domicile of the person to whom or to whose order the goods are addressed, or whether they are to be delivered to the bearer of the said bill.
4. A statement of the goods, stating their generic character, their weight, and the external marks or signs of the packages containing the same.
5. The cost of the transportation.
6. The date on which the shipment is made.
7. The place of the delivery to the carrier.
8. The place and time the delivery is to be made to the consignee.
9. The damages to be paid the carrier in case of delay, if any agreement is made on this point.

The actions arising from the nondelivery of certain merchandise at the point of destination must be brought before the judge of the latter point and not before the one of the domicile of the railroad company against whom the action is brought. (Opinion of June 21, 1888.)

The bill of lading may be validly indorsed by the consignee to a third person without necessity of acquainting the carrier thereof. (Opinion of September 28, 1889.)

This article does not require as a necessary requisite in a commercial transportation contract the delivery of the bill of lading to the shipper, but it grants the privilege to the shipper as well as to the carrier to demand it. (Opinion of May 6, 1895, *Gaceta* of August 16.)

ART. 351. In shipments made over railroads or by other enterprises which are subject to fixed schedules or the time fixed by regulations, it shall be sufficient that the bills of lading or declarations of shipment furnished by the shipper refer, with regard to the rate, time, and special conditions of the transportation, to the schedules and regulations, the application of which is requested; and should no schedule be determined the carrier must apply the rates of the merchandise paying the lowest, with the condition inherent thereto, always including their statement or reference in the bill of lading delivered to the shipper.

The obligation of railroad companies to invoice the packages which are presented to them for the purpose is subordinated to the condition of the shipper in making the transportation contract subjecting himself to the provisions of the regulations or those legitimately established by the carrier company. (Opinion of December 14, 1888.)

Since the publication of this code of commerce in 1885 the rights and obligations arising from transportation contracts by railroads are governed in the first place by the regulations of said railroads, the provisions contained in the police law of railroads of November 23, 1877, and the regulations for its execution of March 2, 1892, being supplementary. (Opinion of March 2, 1892. *Gaceta* of April 17.)

ART. 352. Bills of lading or tickets in the case of transportation of passengers may be different, one for persons and another for baggage, but all of them shall contain the name of the carrier, the date of shipment, the points of departure and arrival, the price, and with regard

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to baggage, the number and weight of the packages, with any other indications which may be considered necessary in order to easily identify them.

ART. 353. The legal instruments of the contract between the shipper and the carrier shall be the bills of lading, by the contents of which all disputes which may arise with regard to their execution and fulfillment shall be decided without admission of other exceptions than forgery or material errors in the drafting thereof.

After the contract has been consummated the bill of lading issued shall be returned to the carrier, and by virtue of the exchange of this certificate for the article transported, the respective obligations and actions shall be considered as canceled, unless in the same act the claims which the contracting parties desire to reserve are reduced to writing, exception being made of the provisions of article 366.

If in case of loss or for any other reason whatsoever, the consignee can not return upon receiving the merchandise the bill of lading subscribed by the carrier, he shall give said carrier a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading.

The receipt of goods transported and the payment of the transportation without protest or reserve extinguishes all rights of action against the carrier company, in accordance with article 150 of the regulations for the police of railroads of July 8, 1859, in conformity with article 207 of the code of commerce of 1829, which is the equivalent of the one we annotate. (Opinion of December 3, 1887.)

See the addition to article 360.

ART. 354. In the absence of a bill of lading disputes shall be decided by virtue of the legal proofs each contracting party may submit in support of his respective claim, in accordance with the general provisions established in this code for commercial contracts.

In so far as the proof is concerned, see articles 51 et seq. of this code, together with article 578 of the law of civil procedure for the Peninsula, article 577 of that for Cuba and Porto Rico, and 561 of that for the Philippines.

ART. 355. The liability of the carrier shall begin from the moment he receives the merchandise, in person or through a person intrusted thereto in the place indicated for their reception.

In order to avoid questions with regard to the scope to be given the article we annotate, there must be taken into consideration that a delivery, according to article 112 of the regulations for the execution of the police law of railroads, must not only take place in the building fixed for the purpose, but must be delivered to the persons designated by the company for the purpose, there not being considered as such the auxiliary employees engaged in labor or in mechanical services in the offices and stations.

The supreme court in opinions of April 4, 1873, 11th of the same month, of the year 1877, and of October 17, 1888, established that, after merchandise has been delivered for transportation in the building destined to the purpose, the carrier receiving it shall be liable for the injury and damage by reason of the loss or impairment of the same, in accordance with article 114 of the regulations for the police of railroads.

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ART. 356. Carriers may refuse to accept packages which appear unfit for transportation; and if said transportation is to be made over a railroad, and the shipment is insisted on, the company shall carry it, being exempt from all liability if it so states in the bill of lading.

ART. 357. If the carrier by reason of well-founded suspicions as to the correctness of the declaration of the contents of a package should determine to examine it, he shall do so before witnesses, in the presence of the shipper or of the consignee.

Should the shipper or consignee to be cited not appear, the examination shall be made before a notary, who shall draft a certificate of the result of the examination, for the proper purposes.

If the declaration of the shipper should be correct, the expenses caused by the examination and those of carefully repacking the packages shall be defrayed by the carrier, and in a contrary case by the shipper.

ART. 358. Should no period within which goods are to be delivered be previously fixed, the carrier shall be under the obligation to forward them in the first shipment of the same or similar merchandise which he may make to the point of delivery; and should he not do so, the damages occasioned by the delay shall be suffered by him.

The actions arising from the nondelivery of certain merchandise at the station of the point of destination must be instituted before the judge of the latter point and not before the one of the domicile of the company against which the action has been brought. (Opinion of June 21, 1888.)

According to rule 20 of the royal order of February 1, 1887, issued by the secretary of the interior, authorized by a law to regulate the service of railroads, the judicial claims arising from the transportation contract may be brought, at the option of the shipper or of the consignee, against the company which received the merchandise, or against the company which was to have delivered it, before the competent authority in either case. (Opinion of the supreme court of March 18, 1889. *Gacetas* of April 3 and 8.)

ART. 359. If there should be an agreement between the shipper and the carrier with regard to the road over which the transportation is to be made, the carrier can not change the route, unless obliged to do so by force majeure; and should he do so without being forced to, he shall be liable for any damage which may be suffered by the goods transported for any cause whatsoever, besides being required to pay the amount which may have been stipulated for such a case.

When on account of the said force majeure the carrier is obliged to take another route, causing an increase in the transportation charges, he shall be reimbursed for said increase after presenting the formal proof thereof.

ART. 360. The shipper may, without changing the place where the delivery is to be made, change the consignment of the goods delivered to the carrier, and the latter shall comply with his orders, provided that at the time of making the change of the consignee the bill of lading subscribed by the carrier be returned to him, if one were issued, exchanging it for another containing the novation of the contract.

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The expenses arising from the change of consignment shall be defrayed by the shipper.

Neither this article nor article 353 prohibit the consignee from indorsing or transferring the bill of lading, and the indorser shall be liable, as the legitimate representative of the actions and rights of the consignee, to make use of the same. (Opinion of September 28, 1889. *Gaceta* of November 12.)

ART. 361. Merchandise shall be transported at the risk and venture of the shipper, unless the contrary was not expressly stipulated.

Therefore, all damages and impairment suffered by the goods in transportation, by reason of accident, force majeure, or by virtue of the nature or defect of the articles, shall be for the account and risk of the shipper.

The proof of these accidents is incumbent on the carrier.

With regard to accidents to be considered of force majeure for the purposes of article 36 of the railroad law, see article 29 of the regulations for its execution of May 24, 1878.

ART. 362. The carrier, however, shall be liable for the losses and damages arising from the causes mentioned in the foregoing article if it is proved that they occurred on account of his negligence or because he did not take the precautions usually adopted by careful persons, unless the shipper committed fraud in the bill of lading, stating that the goods were of a class or quality different from what they really were.

If, notwithstanding the precaution referred to in this article, the goods transported run the risk of being lost on account of the nature or by reason of an unavoidable accident, without there being time for the owners of the same to dispose thereof, the carrier shall proceed to their sale, placing them for this purpose at the disposal of the judicial authority or of the officials determined by special provisions.

For the sale referred to in this article, the proceedings shall be in accordance with articles 2161 et seq. of the law of civil procedure for the Peninsula, 2122 of that for Cuba and Porto Rico, and 2082 of that for the Philippines.

According to an opinion of the supreme court of April 27, 1876, indemnity for damages shall be proper in transportation contracts when a robbery has taken place which could be avoided.

ART. 363. With the exception of the cases prescribed in the second paragraph of article 361, the carrier shall be obliged to deliver the goods transported in the same condition in which, according to the bill of lading, they were at the time of their receipt, without any detriment or impairment, and should he not do so, he shall be obliged to pay the value of the goods not delivered at the point where they should have been and at the time the delivery should have taken place.

If part of the goods transported should be delivered the consignee may refuse to receive them, when he proves that he can not make use thereof without the others.

Article 363, which we annotate, and articles 364 and 365 et seq., in fixing the obligations of the carrier and the amounts to be paid to the owner in cases of loss or

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damage of the merchandise, do not exclude the indemnification for other damage caused. (Opinion of November 19, 1888.)

See the annotation to the foregoing article.

The loss of some goods is only an indefinite delay, for which reason the indemnity for loss and damage can not exceed the current price of the goods on the day and at the place they should have been delivered. (Opinion of March 2, 1892. *Gaceta* of April 17.)

ART. 364. If the effect of the averages referred to in article 361 should be only a reduction in the value of the goods, the obligation of the carrier shall be reduced to the payment of the amount of said reduction in value, after appraisal by experts.

ART. 365. If, on account of the averages, the goods are rendered useless for purposes of sale or consumption in the manner proper to the same the consignee shall not be bound to receive them, and may leave them on the hands of the carrier, demanding payment therefor at current market prices.

If among the goods damaged there should be some in good condition and without any defect whatsoever, the foregoing provision shall be applicable with regard to the damaged ones, and the consignee shall receive those which are perfect, this separation being made by distinct and separate articles, no object being divided for the purpose, unless the consignee proves the impossibility of conveniently making use thereof in this form.

The same provision shall be applied to merchandise in bales or packages, with distinction of the packages which appear perfect.

See the addition to article 363.

The supreme court reversed and annulled a decision by which a company was adjudged to pay without distinction, the value of three bales of hides of which the shipment was composed, and in addition 50 per cent, by reason of indemnity for damages, it being proved that of the three bales one arrived intact and that fine hides had been removed, leaving nothing but the coarse ones, and that the impossibility of making use of one without the other had not been proved, violating thereby the provisions of the article we annotate and the last paragraph of article 371, which fixes the manner of making the appraisement of the indemnity in such a case. (Opinion of March 19, 1899.)

ART. 366. Within the twenty-four hours following the receipt of the merchandise a claim may be brought against the carrier on account of damage or average found therein on opening the packages, provided that the indications of the damage or average giving rise to the claim can not be ascertained from the exterior of said packages, in which case said claim would only be admitted on the receipt of the packages.

After the periods mentioned have elapsed, or after the transportation charges have been paid, no claim whatsoever shall be admitted against the carrier with regard to the condition in which the goods transported were delivered.

See article 2127 of the law of civil procedure for the Peninsula, and article 2088 of that for Cuba and Porto Rico.

The supreme court established in an opinion of April 16, 1875, that when a consignee receives the merchandise transported and indemnity for the delay, paying the freight charges without protest, all actions against the carrier are extinguished.

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ART. 367. If there should occur doubts and disputes between the consignee and the carrier with regard to the condition of goods transported at the time of their delivery to the former, the said goods shall be examined by experts appointed by the parties, and a third one, in case of disagreement, appointed by the judicial authority, the result of the examination always being reduced to writing; and if the persons interested should not agree to the report of the experts and could not reach an agreement, said judicial authority shall have the merchandise deposited in a safe warehouse, and the parties interested shall make use of their rights in the proper manner.

For the examination and deposit referred to in this article the proceedings shall be in accordance with articles 2119 of the law of civil procedure for the Peninsula, 2080 et. seq. of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 368. The carrier must deliver to the consignee without any delay or difficulty the merchandise received by him, by reason of the mere fact of being designated in the bill of lading to receive it; and should said carrier not do so he shall be liable for the damages which may arise therefrom.

With regard to article 221 of the repealed code, with which the article we annotate corresponds, the supreme court established, in an opinion of October 5, 1876, that although the said article declares that the carrier has no personality to investigate the title with which the consignee receives the merchandise transported, and that he must deliver it without any delay or difficulty on account of the mere fact of being designated in the bill of lading to receive it, being liable in case of not doing so for all the damages which may be incurred by the owner on account of the delay, this provision must be construed in general terms and in ordinary cases where there is no insurmountable material or legal obstacle in the way of making the delivery, being furthermore subordinated to the provisions of article 223 of the said code.

ART. 369. Should the consignee not be at the domicile indicated in the bill of lading, or should refuse to pay the transportation charges and expenses, or to receive the goods, the deposit of said goods shall be ordered by the municipal judge, where there is no judge of first instance, to be placed at the disposal of the shipper or sender, without prejudice to a third person having a better right, this deposit having all the effects of a delivery.

See articles 2119 of the law of civil procedure for the Peninsula, 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 370. If a period has been fixed for the delivery of the goods, it must be made within the same, and otherwise the carrier shall pay the indemnity agreed upon in the bill of lading, neither the shipper nor consignee being entitled to anything else.

Should no indemnity have been agreed upon and the delay exceeds the time fixed in the bill of lading, the carrier shall be liable for the damages which may have been caused by the delay.

ART. 371. In cases of delay on account of the fault of the carrier, referred to in the foregoing articles, the consignee may leave the goods

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transported on the hands of the carrier, informing him thereof in writing before the arrival thereof at the point of destination.

When this abandonment occurs, the carrier shall satisfy the total value of the goods, as if they had been lost or mislaid.

Should the abandonment not occur the indemnity for loss and damages on account of the delays can not exceed the current price of the goods transported on the day and at the place where the delivery was to have been made. The same provision shall be observed in the cases where this indemnity is due.

The provisions of this article are not applicable when goods are not in question which are to be sold at their point of delivery, but consist of samples having no inherent value, except for the purposes of making sales. (Opinion of March 27, 1890. *Gacetas* of July 30 and August 5.)

The exercise of the right granted by this article, of abandonment of merchandise received after delay, and after the price of the merchandise has been fixed and accepted by both parties, excludes all claims for loss and damages, which can only be brought if the abandonment does not take place. (Opinion of the Supreme Court of September 28, 1895. *Gaceta* of November 12).

See the addition to article 365.

ART. 372. The value of the goods which the carrier must pay in case of their being lost or mislaid shall be fixed in accordance with the declaration contained in the bill of lading, no proofs being allowed on the part of the shipper that there were among the goods declared therein articles of greater value, and money.

Horses, vehicles, vessels, equipments, and all the other principal and accessory means of transportation, shall be especially obligated in favor of the shipper, although with relation to railroads said obligation shall be subordinated to the provisions of the laws of concession with regard to property and to those of this code with regard to the manner and form of making attachments and retentions against the said companies.

ART. 373. A carrier who delivers merchandise to a consignee by virtue of agreements or combined services with other carriers shall assume the obligations of the carriers who preceded him, reserving his right to proceed against the latter if he should not be directly responsible for the fault which gives rise to the claim of the shipper or of the consignee.

The carrier making the delivery shall also assume all the actions and rights of those who may have preceded him in the transportation.

The sender and the consignee shall have a right of action against the carrier who executed the transportation contract, or against the other carriers who received the goods transported without reserve.

The reservations made by the latter shall not exempt them, however, from the liabilities they may have incurred by reason of their own acts.

ART. 374. The consignees to whom the remittance was made can not defer the payment of the expenses and transportation charges on the goods received after twenty-four hours have elapsed from the time of

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the delivery; and in case of delay in making this payment, the carrier may request the judicial sale of the goods he transported to a sufficient amount to cover the transportation charges and the expenses incurred.

With regard to the proceedings to recover the amount of the expenses and the transportation charges of the goods, see No. 1, or article 1544 and article 1545 of the law of civil procedure for the Peninsula, 1543 of that for Cuba and Porto Rico, and 1526 of that for the Philippines.

ART. 375. The goods transported shall be specially obligated to answer for the transportation charges and for the expenses and fees caused by the same during their transportation, or until the time of their delivery.

This special right shall be limited to eight days after the delivery has been made, and after said prescription the carrier shall have no further right of action than that corresponding to an ordinary creditor.

ART. 376. The preference of the carrier to the payment of what is due him for the transportation and expenses of the goods delivered to the consignee shall not be affected by the bankruptcy of the latter, provided the action is brought within the eight days mentioned in the foregoing article.

ART. 377. The carrier shall be liable for all the consequences arising from noncompliance on his part with the formalities prescribed by the laws and regulations of the public administration during the entire course of the trip and on the arrival at the point of destination, except when his omission arises from his having been induced into error by false statements of the shipper in the declaration of the merchandise.

If the carrier has acted in accordance with a formal order received from the shipper or consignee of the merchandise both shall incur liability.

ART. 378. Transportation agents shall be obliged to keep a special registry, with the formalities required by article 36, in which there shall be entered, in progressive order of numbers and dates, all the goods the transportation of which is undertaken, stating the circumstances required by articles 350 et seq. for the respective bills of lading.

ART. 379. The provisions contained in article 349 et seq. shall also be understood as relating to persons who, although they do not personally effect the transportation of commercial goods, contract to do so through others, either as contractors for a special and fixed transaction or as freight and transportation agents.

In either case they shall be subrogated to the place of the carriers with regard to the obligations and liability of the latter, as well as with regard to their right.

The judicial claims arising from a transportation contract may be brought, at the option of the shipper or consignee, against the company which received the merchandise or against the one which was to deliver the same, before the competent authority in either case. (Opinion of March 18, 1889.)

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TITLE VIII.

INSURANCE CONTRACTS.

SECTION FIRST.

Insurance contracts in general.[1]

ART. 380. An insurance contract shall be commercial if the underwriter is a merchant and the contract is at a fixed premium, or when the insured pays only a single and constant amount as the price or compensation for the insurance.

ART. 381. An insurance contract shall be void—

1. By reason of the bad faith of any of the parties at the time of the execution of the contract.

2. By reason of the incorrect declaration of the insured, even though made in good faith, provided it may influence the estimation of the risks.

3. By reason of the omission or concealment on the part of the insured, or facts or circumstances which may have influenced the execution of the contract.

See articles 752, 781, 788, and 800 of this code, which prescribe the cases of nullity of marine insurance for identical or similar reasons.

ART. 382. An insurance contract shall be reduced to writing in a policy or in another public or private instrument subscribed by the contracting parties.

ART. 383. The policy of an insurance contract must contain—

1. The names of the underwriter and of the insured.

2. The risk against which insurance is taken.

3. The designation and location of the articles insured, and the indications which may be necessary to determine the nature of the risks.

4. The appraised value of the articles insured, in detailed amounts, according to the different kinds of articles.

5. The sum or premium which the insured binds himself to pay, the form and manner of payment, and the place where said payment is to be made.

6. The duration of the insurance.

7. The day and the hour from which the effect of the contract is to begin.

8. The insurance already existing on the same goods.

9. The other agreements made by the contracting parties.

ART. 384. The novations made in the contract during the time of the insurance, increasing the goods insured, extending the insurance to new risks, reducing the latter or the amount insured, or introducing any other essential modification, must be included in the policy of insurance.

See articles 417, 433, and 737 of this code.

[1] Marine insurance is referred to in section 3, Title III, Book III, of this code.

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ART. 385. The insurance contract shall be governed by the licit agreements contained in each policy or instrument, and in the absence thereof, by the rules contained in this title.

As has been repeatedly declared by the supreme court, the law in insurance contracts is the policy signed by both parties, by the clauses of which all questions arising between the insured and the underwriter must be decided.

With regard to the rights of the underwriter and of the insured see articles 168, case 6, 219, 220, and 221 of the mortgage law, and the second paragraph of article 18 of the regulations for drafting public documents subject to record.

The clause contained in an insurance policy that "all actions for the payment of damages prescribe six months after the date of the fire, or from the last judicial proceedings or decisions rendered in suits instituted by the persons suffering the loss, exempts the company underwriting the insurance from the obligation to pay indemnity if the former allows said period to elapse without appearing before the judge who is declared of competent jurisdiction in a decree of prohibition of another judge. (Opinion of December 22, 1894. *Gaceta* of May 9, 1895.)

SECTION SECOND.

Fire insurance.

ART. 386. All personal or real property which is liable to be destroyed or injured by fire may be the subject of an insurance contract against fire.

ART. 387. All commercial securities or instruments are excepted from this provision, as well as those of the State or of private parties, bank notes, shares and obligations of associations, precious stones and metals, in coin or in bullion, and objects of art, unless an express agreement to the contrary is made, the value and conditions of said articles being fixed in the policy.

ART. 388. In contracts of insurance against fire, in order that the underwriter be obligated, he must have received the single premium agreed upon or the partial ones at the periods fixed.

The insurance premium shall be paid in advance, and the payment shall bind the underwriter, no matter what may be the duration of the insurance.

ART. 389. If the insured delays in paying the premium, the underwriter may rescind the contract within the first forty eight hours, immediately advising the insured of his action.

Should he not exercise this right, the contract shall be understood as in force and he shall have a right of action to secure an execution to recover payment for the premium or premiums lapsed without further requisite than the acknowledgment of the signatures of the policy.

ART. 390. The value set upon the objects of the insurance, the premiums paid by the insured, the designations, and the appraisements contained in the policy shall not in themselves be proof of the existence of the articles insured at the time and in the place where the fire occurs.

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ART. 391. The substitution or change of the articles insured for others of a different kind or species not included in the insurance shall annul the contract from the time the substitution took place.

ART. 392. The alteration or transformation of the articles insured, by reason of an accident or by the act of a third person, shall entitle either of the contracting parties to rescind the contract.

ART. 393. The insurance against fire shall include the repair or indemnity for all the loss and material damage caused by the direct action of the fire and by the inevitable consequences of the fire, and particularly—

1. The expenses incurred by the insured by reason of the transportation of the goods for the purpose of saving them.

2. The damage suffered by the goods saved.

3. The damage to the goods insured caused by the measures adopted by the authority to reduce or extinguish the fire.

ART. 394. In insurance against meteorological accidents, explosions of gas or steam apparatus, the underwriter shall only be liable for the consequences of the fires caused by said accidents, unless there is an agreement to the contrary.

ART. 395. The insurance against fires does not include, unless there is an agreement to the contrary, the loss suffered by the insured on account of suspension of work or of industry, or of profit from the estate lost by fire, or any other similar causes which give rise to losses and damages.

ART. 396. The underwriter shall secure the insured against the effects of fire, be it caused either by an accident or by the malice of strangers or by personal negligence or carelessness of the persons, he is civilly liable for.

The underwriter shall not secure against fires caused by the crime of the insured, nor by military forces in time of war nor on account of those caused by mobs or by eruptions, volcanoes and earthquakes.

ART. 397. The guaranty of the underwriter shall only extend to the goods insured and in the building in which they were located, and his liability shall in no case exceed the amount at which the goods were valued or at which the risk was appraised.

ART. 398. The insured must give an account to the underwriter of—

1. All previous insurances, and those taken out simultaneously or subsequently.

2. The modifications to which the insurance mentioned in the policy was subjected.

3. The changes and alterations in quality suffered by the goods insured, and which increase the risks.

ART. 399. The goods insured for their full value can not be again insured while the first insurance is in force, unless in case the new underwriters guaranty or give bond for the fulfillment of the contract made with the first underwriter.

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ART. 400. If in different contracts one article has been insured for an aliquot part of its value, the underwriters shall contribute to the indemnity in proportion to the amounts they underwrote.

The underwriter may convey to other underwriters one or more parts of the insurance, but shall be directly and exclusively liable to the insured.

In cases of conveyance of part of the insurance or of the reinsurance the assignors who receive the proportionate part of the premium shall be obligated, with regard to the first underwriter, to contribute in equal proportion to the indemnity, assuming the liability of the agreements, transactions, and arrangements made between the insured and the principal or first underwriter.

ART. 401. The insurance shall not be annulled by reason of the death, liquidation, or bankruptcy of the insured, and sale or transfer of the goods, if the article insured consisted of real estate.

The underwriter may rescind the contract by reason of the death, liquidation, or bankruptcy of the insured and the sale or transfer of the goods, if the articles insured consisted of personal property, of a manufacturing establishment, or shop.

In case of rescission, the underwriter must inform the insured or his representatives within the period of fifteen days, which can not be extended.

ART. 402. If the insured or his representative does not inform the underwriter of any of the facts enumerated in the second paragraph of the foregoing article within the period of fifteen days, the contract shall be void from the date on which said acts occurred.

ART. 403. Personal property shall be liable for the payment of the insurance premium with preference to any other credits whatsoever which may be due.

With regard to real property, the provisions of the mortgage law shall be observed.

Articles 168, 219, 220, and 221 of the mortgage law in its sixth case establish a legal mortgage in favor of the underwriters on the property insured for the premiums for two years, and, if the insurance is mutual, for the two last assessments which may have been made. A similar provision is contained in No. 2 of article 1923 of the civil code now in force.

ART. 403. (Philippines.) Personal property shall be liable for the payment of the insurance premium with preference to any other credits whatsoever which may be due.

With regard to real property the provisions of the Mortgage Law shall be observed, *in the absence of which the agreements contained in a public instrument made part of the protocol shall be observed.*

See case number 6 of article 168 and articles 219 to 221 of the mortgage law for the colonies.

ART. 404. In case of a calamity the insured must immediately inform the underwriter, also filing with the municipal judge a statement of the

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goods existing at the time of the calamity, and of the goods saved, as well as the loss suffered, according to his valuation.

ART. 405. The insured must prove the loss suffered, proving the existence of the goods before the fire occurred.

ART. 406. The appraisement of the damage caused by the fire shall be made by experts in the manner established in the policy, by an agreement between the parties, in the absence of which, said appraisement shall be made in accordance with the provisions of the Law of Civil Procedure.

Articles 2175 et seq. of the law of civil procedure for the Peninsula, article 2136 of that for Cuba and Porto Rico, and article 2096 of that for the Philippines, refer to the appointment of experts in insurance contracts.

ART. 407. The experts shall decide:

1. The causes of the fire.

2. The true value of the goods insured on the day of the fire, before it took place.

3. The value of the same goods after the fire, and everything else which may be submitted to their judgment.

ART. 408. If the amount of loss suffered exceeds the amount of insurance carried, the insured shall be considered his own underwriter for this excess, and shall be liable for the aliquot part of the losses and expenses.

ART. 409. The underwriter shall be obliged to pay the indemnity fixed by the experts within ten days following their decision after it has been agreed to.

In case of delay, the underwriter shall pay the insured the legal interest on the amount due from the date of the termination of said period.

See the doctrine of the opinion of December 22, 1894, in the addition to article 385.

ART. 410. The decision of the experts shall be the basis for an execution against the underwriter, if said decision was rendered before a notary; and should this not have been done, after an acknowledgment and judicial admission of their signatures and of the truth of the instrument.

This constitutes the basis for an execution not admitted in the common law.

ART. 411. The insurer shall choose, within the ten days fixed in article 409, between indemnifying for the calamity, or repair, rebuild, or replace, according to their nature or character, in whole or in part, the goods insured and destroyed by the fire, if an agreement should be reached.

ART. 412. The insurer may acquire the goods saved for himself, provided he pays the insured their true value in accordance with the appraisement referred to in case No. 2 of article 407.

ART. 413. The underwriter after paying the indemnity shall be subrogated to the rights and actions of the insured against all the authors

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and persons liable for the fire in the necessary capacity or right, as the case may be.

ART. 414. The underwriter, after the calamity, may rescind the contract with regard to ulterior accidents, as well as any other contract he may have made with the insured, advising the latter fifteen days in advance and returning the part of the premium corresponding to the period not elapsed.

ART. 415. The expenses arising from the expert appraisement and the liquidation of the indemnity shall be defrayed for the account in equal parts of the insured and of the underwriter; but if there is an obvious exaggeration of the loss on the part of the insured, the latter shall be the only one liable therefor.

SECTION THIRD.

Life insurance.

ART. 416. Life insurance shall include all the combinations which can be made, making agreements with regard to the payment of premiums or of capital in exchange for the enjoyment of a life annuity or up to a certain age, or the receipt of capital on the death of a certain person, in favor of the insured, his legal representative, or of a third person, or any other similar or analogous combination.

ART. 417. The life-insurance policy shall contain, besides the requisites mentioned in article 383, the following:

1. A statement of the amount insured for, in capital or in annuity.

2. A statement of the reduction or increase in the capital or annuity assured, and of the dates from which said increase or reduction is to be computed.

ART. 418. This contract may be made on the life of a person or of several persons without regard to age, conditions, sex, and state of health.

ART. 419. The insurance may be made in favor of a third person, stating in the policy the name, surname, and conditions of the donor or person insured, or determining said person in some other indisputable manner.

ART. 420. A person insuring a third person is bound to fulfill the conditions of the insurance, the provisions of articles 426 and 430 being applicable to the latter.

ART. 421. Only the person who insures and contracts directly with the underwriting company shall be bound to the fulfillment of the contract as insured and to the consequent payment of the premium, by the payment of the single sum or of the partial ones which may have been agreed upon.

The policy, however, shall entitle the person insured to demand the fulfillment of the contract of the underwriting company.

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ART. 422. There shall only be understood embraced in a life insurance the risks which are enumerated specially and in detail in the policy.

ART. 423. The insurance in case of a death shall not be paid if it occurs in any of the following manners:

1. If the insured dies in a duel or as the consequences thereof.
2. If he commits suicide.
3. If he suffers capital punishment for ordinary crimes.

ART. 424. The insurance in case of death shall not be paid, unless there is an agreement to the contrary and the insured pays the extra premium required by the underwriter—

1. If the death occurs on a voyage outside of Europe.[1]
2. If the death occurs in the military or naval service in time of war.
3. If the death occurs in any extraordinary undertaking or act which is notoriously reckless and imprudent.

ART. 424. (Cuba and Porto Rico.) See the note to the text of this article for the Peninsula.

ART. 424. (Philippines.) The insurance in case of death shall not be paid, unless there is an agreement to the contrary and the insured pays the extra premium required by the underwriter—

1. If the death occurs in voyages *outside the limits of the lands and waters under the jurisdiction of the Spanish provinces of Oceania.*
2. If the death occurs in the military or naval service in time of war.
3. If the death occurs in any extraordinary undertaking or act which is acknowledged as reckless and imprudent.

ART. 425. The insured who delays the payment of the premium or sum agreed upon shall not have a right to demand the amount of the insurance or the amount insured if the calamity occurs or the condition of the contract is complied with if he is in default.

ART. 426. If the insured has paid several partial installments and can not continue the contract, he shall inform the underwriter, reducing the amount insured to the sum which is in just proportion with the installments paid, in accordance with the calculations which appear in the schedules of the insurance company, and taking into consideration the risks run by the latter.

ART. 427. The insured must inform the underwriter of the insurance on his life which he previously or simultaneously takes out in other insurance companies.

The lack of this requisite shall deprive the insured of the benefits of the insurance, he being only entitled to the face value of the policy.

ART. 428. The amounts which the underwriter must deliver to the person insured, in fulfillment of the contract, shall be the property of the latter, even against the claims of the legitimate heirs or creditors

[1] Although in the corresponding amendment nothing is said, we understand that this article can not be in force in Cuba and Porto Rico in the manner in which it is drafted, and that it must be considered as amended in a similar manner as for the Philippines.

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of any kind whatsoever of the person who effected the insurance in favor of the former.

ART. 429. The failure or bankruptcy of the insured shall not annul nor rescind the life-insurance contract, but it may be reduced at the request of the legitimate representatives of the bankruptcy, or be liquidated in the terms fixed in article 426.

ART. 430. The life-insurance policies, after the premiums or installments which the insured bound himself to pay have been satisfied, shall be negotiable, the indorsement being placed on the policy itself, the insurance company being informed thereof in an authentic manner by the indorser and indorsee.

The precept of this article is in accordance with the doctrine of an opinion of the supreme court of July 7, 1881, in which it is declared: "That insurance policies are negotiable when their transferable character appears therein in an undoubtable manner."

ART. 431. The life-insurance policy in which a fixed amount and time for payment is stipulated, either in favor of the insured or in that of the underwriter, shall be the basis for an action to obtain an execution with regard to both contracting parties.

The insurance company, after the period fixed in the policy for payment has elapsed, may furthermore rescind the contract, communicating its decision within a period not exceeding twenty days following the due date, and the amount of the policy being for the benefit of the insured exclusively.

SECTION FOURTH.

Land transportation insurance.

ART. 432. All goods which can be transported by the usual means of land locomotion may be the subject of an insurance contract against the risks of transportation.

ART. 433. Besides the requisites which a policy must contain, according to article 383, a transportation-insurance policy must include—

1. The company or person who takes charge of the transportation.
2. The specific kinds of goods insured, with a statement of the number of packages and their marks.
3. The designation of the point where the goods insured are to be received and where the delivery is to be made.

ART. 434. Not only the owners of the goods transported, but also all those who are interested or are liable for their preservation, may take out insurance thereon, stating in the policy in what capacity they do so.

ART. 435. The contract for transportation insurance shall include risks of all kinds, no matter what their reason may be, but the underwriter shall not be liable for impairment caused by the defects inherent in the article or on account of the natural lapse of time, unless there is an agreement to the contrary.

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ART. 436. In cases of impairment on account of a defect in the article or by reason of lapse of time, the underwriter shall judicially prove the condition of the merchandise insured, within the twenty four hours following its arrival at the point it is to be delivered.

Without this proof the exemption which he may bring forward as underwriter shall not be admissible.

ART. 437. The underwriters shall subrogate themselves to the rights of the insured for the purpose of bringing an action against the carriers on account of the damage they may be liable for, in accordance with the provisions of this code.

SECTION FIFTH.

Other kinds of insurance.

ART. 438. Any other risks may be the subject of a commercial insurance contract, which arises from accidental cases or natural accidents, and the agreements made must be complied with provided they are licit and are in accordance with the provisions of the first section of this title.

TITLE IX.

COMMERCIAL GUARANTIES.

ART. 439. All guaranties shall be considered commercial the purpose of which is to insure the fulfillment of a commercial contract, even though the guarantor is not a merchant.

The supreme court established in an opinion of May 9, 1870, that promissory notes and their securities must accommodate themselves to the character of the contracts which it was desired to assure and guarantee through their execution, and must be subject to the rules determining the nature of the said contracts; and therefore the pledge referred to in article 475 of the code of commerce (486 of this code) to guarantee the payment of bills of exchange, independently of the obligation which is contracted by the person accepting the same and the indorser, can not be considered a commercial guaranty, because neither the former nor the latter can change, vary, nor modify the true character of the contract which produced the same.

ART. 440. The commercial guaranty must be reduced to writing, being otherwise null and void.

ART. 441. A commercial guaranty shall be gratuitous, unless there is an agreement to the contrary.

ART. 442. In contracts for an indefinite period, if it has been agreed to give the guarantor a compensation, the guaranty shall continue in force until, by reason of the complete termination of the principal contract which is secured, the obligations arising therefrom are canceled, no matter what their duration may be, unless a fixed period during which the guaranty was to continue in force was expressly agreed upon.

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TITLE X.

CONTRACTS AND BILLS OF EXCHANGE.

SECTION FIRST.

Forms of bills of exchange.

ART. 443. A bill of exchange shall be considered a commercial instrument, and all the rights and actions arising therefrom, without distinction of persons, shall be governed by the provisions of this code.

When an exchange contract between merchants is in question, the clear and definite provisions of the code of commerce only are to be taken into consideration. (Opinion of April 1, 1887.)

A contract of a bill of exchange is consummated by the acceptance of the same, which binds the person accepting it to pay said bill of exchange, the place of the fulfillment of said obligation being that designated by the drawer as the domicile of the payer, which is the one where the latter must pay; with this data there shall be decided the competency in judicial questions which are instituted by reason of the bill of exchange, in accordance with the provisions of article 62 of the law of civil procedure. (Opinion of August 21, 1890. *Gaceta* of September 5.)

ART. 444. The bill of exchange must contain, in order that it may be admissible in suits—

1. The designation of the place, day, month, and year on which it is issued.

2. The time it falls due.

3. The name and surname, firm name, or title of the person to whose order the payment is to be made.

4. The amount which the drawer orders paid, stating the same in cash or in the figures which commerce may have adopted for exchange purposes.

5. The form in which the consideration is acknowledged, either on account of the receipt of its value in cash or merchandise or other property, which shall be expressed with the words "value received," or accepting it on those which may be pending, which shall be indicated by the words "value on account" or "value understood."

6. The name, surname, firm name, or title of the person from whom the amount of the bill of exchange is received, or to whose account it is charged.

7. The name and surname, firm name, or title of the person or association on whom it is drawn, as well as his or its domicile.

8. The signature of the drawer, in his own hand, or that of his agent having sufficient power of attorney for the purpose.

Paragraph 8 of this article, as well as article 447, refers to drafts drawn in the name of others. (Opinion of December 16, 1890.)

ART. 445. The clauses of "value on account" and "value understood" shall make the person accepting the draft liable for the amount of the same in favor of the drawer, in order to demand it or compen-

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sate him in the manner and at the time which both may have agreed on in making the exchange contract.

ART. 446. The drawer may draw the bill of exchange:

1. To his own order, stating that he reserves to himself the value thereof.

2. On a person, in order that he may make the payment at the domicile of a third person.

3. On himself, at a place which is not his domicile.

4. On another person, at the same place as the residence of the drawer.

5. On himself, but by order and for the account of a third person, this being stated in the bill of exchange.

This circumstance shall not change the liability of the drawer, nor shall the holder acquire any right whatsoever against the third person for whose account the bill was drawn.

ART. 447. All persons who place their signature on bills of exchange in the name of others, as drawers, indorsers, or as acceptors of the same, must be authorized thereto by virtue of a power of attorney of the persons for whom they act, this being stated in the subscribing clause.

The purchasers and holders of bills of exchange shall have a right to demand of the signers the exhibition of the power of attorney.

The managers of associations shall be understood as authorized by the mere fact of their appointment.

In an opinion of October 16, 1861, the supreme court laid down as doctrine: That the provisions of the first paragraph of this article are not applicable to the case in which, a factor having been constituted by virtue of general clauses, that he should be the one to place his signature; and in another of November 27, 1881, it was established: That employees of commerce can neither accept nor indorse bills of exchange or promissory notes if they have no special power of attorney therefor.

ART. 448. The drawers can not refuse to issue to holders of the bills of exchange second and third bills, and as many as they may require of the same bill, provided the request is made before the bills fall due, excepting the provisions of article 500, there being stated in all of them that they shall not be considered valid except in case payment was not made on the first bill of exchange issued, or other prior ones.

ART. 449. In the absence of duplicate copies of the draft issued by the drawer any holder may give the purchaser a copy, stating that he issues it in the absence of the original, which it is desired to substitute.

In this copy there must be inserted literally all the indorsements which the original contains.

ART. 450. If the bill of exchange contains some error or lack of legal formality it shall be looked upon as a promissory note in favor of the holder and for the account of the drawer.

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SECOND SECTION.

Periods and due dates of drafts.

ART. 451. Drafts may be drawn for cash or on time for one of the following periods:

1. At sight.
2. At one or more days, and at one or more months after sight.
3. At one or more days or at one or more months from date.
4. At one or more usances.
5. At a fixed or determined day.
6. At fairs.

ART. 452. Each one of these periods shall obligate to the payment of the drafts, as follows:

1. The sight draft, on its presentation.
2. The days or months after sight draft, on the day the period fixed elapses, to be counted from the day following its acceptance or protest on account of nonacceptance.
3. The days or months from date draft as well as that at one or more usances, on the day the period fixed elapses, to be counted from that immediately following the date of the draft.
4. Those drawn for payment on a certain date, on said date.
5. Those drawn on fairs, on the last day thereof.

ART. 453. The usance of the drafts drawn in one place on another in the interior of the Peninsula and adjacent islands shall be sixty days.

In drafts drawn in foreign countries on any place in Spain it shall be—

If drawn in Portugal, France, England, and Germany, sixty days.

In other countries, ninety days.

ART. 453. (Cuba and Porto Rico.) The usance of drafts drawn in one place on another in the interior of *the islands of Cuba and Porto Rico shall be sixty days.*

That of drafts drawn on Cuba or Porto Rico in the islands and coasts of the waters of the Antilles and Gulf of Mexico, and in the United States, Guatemala, Honduras, Nicaragua, Costa Rica, and Brazil, sixty days.

In other countries, ninety days.

ART. 453. (Philippines.) The usance of drafts drawn in one place on another *in the interior of the islands of Luzon and Visayas shall be sixty days.*

That of the drafts drawn on Visayas or Luzon in the other Spanish islands of said archipelago shall be ninety days, as well as for those drawn in ports of China on the sea of the same name, calling places in the Yellow Sea, and places in the straits of Sonda and Malakka.

In other places, *one hundred and twenty days.*

ART. 454. The months for the periods of drafts shall be computed from date to date.

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If in the month the draft falls due there is no day equivalent to that of the date on which the bill was drawn it shall be understood that it falls due the last day of the month.

ART. 455. All drafts must be paid on the day they fall due, before sunset, without any days of grace or of courtesy.

If the day it falls due should be a holiday the draft shall be paid on the previous day.

SECTION THIRD.

Obligations of drawers.

ART. 456. The drawer shall be under the obligation to supply the funds necessary to the person on whom the bill was drawn, unless the draft is made for the account of a third person, in which case the obligation will rest on the latter, always reserving the direct liability of the drawer with regard to the purchaser or holder of the draft and that of the third person for whose account the draft was made with regard to the drawer.

ART. 457. The supply of funds shall be considered made, when, the bill being due, the person on whom it was drawn is the debtor of an equal or greater sum than the draft to the drawer or to the third person for whose account the bill was drawn.

ART. 458. The expenses arising from the nonacceptance or nonpayment of the draft shall be paid by the drawer or by the third person for whose account it was made, unless he proves that he supplied the funds at the proper time, or that he was a creditor in accordance with the foregoing article, or that he was specially authorized to draw for the amount in question.

In any of the three cases, the drawer may require of the person obligated to accept and to pay, the indemnity for the expenses which he may have paid the holder of the draft.

ART. 459. The drawer shall be civilly liable for the results of his draft to all the persons who successively acquire and convey it.

The effects of this liability are specified in articles 456, 458, and the following one.

ART. 460. The liability of the drawer shall cease when the holder of the draft has not presented it or did not protest it in due time and form, provided he proves that when the bill fell due he had supplied the funds for its payment in the manner prescribed in articles 456 and 457.

Should he not adduce this proof, he shall reimburse the amount of the draft not paid, even though the protest was not made at the proper time, during the time the draft has not prescribed. Should he adduce said proof, the liability for the reimbursement shall be incurred by the person who is in default, provided the draft has not prescribed.

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SECTION FOURTH.

Indorsements of bills of exchange.

ART. 461. The ownership of drafts shall be transferred by indorsement.

ART. 462. The indorsement must contain:

1. The name and surname, firm name, or title of the person or company to whom or which the draft is transferred.

2. The form in which the assignor acknowledges the consideration of the purchaser, as stated in No. 5 of article 444.

3. The name and surname, firm name, or title of the person from whom it is received, or to the account of whom it is charged, if it is not the same person to whom the draft is transferred.

4. The date on which it is drawn.

5. The signature of the indorser, or of the person legally authorized to sign for him, which shall be stated in the subscribing clause.

ART. 463. If the statement of the date is omitted in the indorsement, the ownership of the draft shall not be transferred, and it shall be understood as simply a commission for collection.

ART. 464. If a date prior to the day on which the indorsement was made is placed on the draft, the indorser shall be liable for the damages suffered thereby by a third person, without prejudice to the penalty which he may incur for the crime of forgery, if he did so maliciously.

ART. 465. Indorsements signed in blank and those in which the value is not stated shall transfer the ownership of the draft and shall produce the same effect as if "value received" were written therein.

ART. 466. Drafts not issued to order can not be indorsed, nor those which have fallen due or are damaged.

The transfer of ownership shall be licit by the means acknowledged in the common law; and if, however, an indorsement is made, it shall have no further force than that of a simple cession.

ART. 467. The indorsement shall produce in each and every one of the indorsers the liability for the guaranty for the amount of the draft, if it is not accepted, and to its repayment, with the costs of the protest and reexchange, if not paid when due, provided the proceeding of presentation and protest took place at the time and in the manner prescribed in this code.

This liability shall cease on the part of the indorser who, at the time of transferring the draft, may have placed thereon the clause "without my liability."

In such case the indorser shall only answer for the identity of the person making the transfer or for the right with which he makes the transfer or indorsement.

The supreme court, in an opinion of March 18, 1875, declared that it is a principle of international private law that a bill of exchange, the ownership of which is transferred by the indorsement of the persons who successively acquire it, includes,

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when this is done, a similar number of perfect contracts between the respective indorser and the person to whom he transfers it, independently of the original contract made between the drawer and the purchaser; and each one of these contracts is governed, not only with regard to the judicial proof and effects, but also with regard to the form, by the laws of the place where they are made and drawn.

In an opinion of December 15, 1880, the supreme court established, that in order that an indorser be liable and obligated to the repayment of the amount of the draft, together with the protest and reexchange costs, it is necessary that the protest proceedings have taken place at the time and in the manner prescribed by the laws; and in another opinion of February 3, 1866, that the indorser who paid the amount of the draft, including the protest costs, has a right of action against the indorsers who preceded him, for the corresponding reimbursement, or against the drawer, and not subject to the reserved agreements which the former may have made.

ART. 468. The broker of negotiable bills of exchange or promissory notes, constitutes himself guarantor of those he acquires or negotiates for the account of others, if he places his indorsement thereon, and he can only refuse to do so for good reasons, when there was an express agreement made by which the principal freed him from the liability. In this case the agent may make the indorsement at the order of the principal, with the clause, "without my liability."

SECTION FIFTH.

Presentation of drafts and their acceptance.

ART. 469. Drafts which are not presented for acceptance or payment within the period fixed shall be affected thereby, as well as when they are not protested at the proper time.

ART. 470. The drafts drawn in the Peninsula and Balearic islands on any place therein at sight or at a period counted from sight must be presented for collection or acceptance within forty days from their date.

However, a person who draws a bill of exchange at sight or at a period counted after sight may fix a period within which the presentation must be made; and in such case the holder of the draft shall be obliged to present it within the period fixed by the drawer.

ART. 470. (Philippines.) Bills of exchange drawn *in the islands of Luzon and Visayas and in the adjacent ones, on any point therein*, at sight or at a period counted after sight, must be presented for collection or acceptance within *sixty* days from their date.

ART. 471. Bills of exchange drawn between the Peninsula and the Canary Islands shall be presented in the cases referred to in the two foregoing articles within the period of three months.

ART. 471. (Philippines.) Bills of exchange drawn *in the islands of Luzon, Visayas, and the adjacent ones, on places in the Mariana Islands, Carolines, and Palaos, shall be presented in the cases referred to in the foregoing article within the period of six months.*

Bills of exchange drawn between the Peninsula and the Spanish

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Antilles or other points which are on this side of Cape Horn and the Cape of Good Hope, no matter what may be the form of the period mentioned therein, shall be presented for payment, or acceptance within six months at most.

With regard to places which are on the other side of said capes the period shall be of one year.

ART. 472. (Philippines.) Bills of exchange drawn *between the Philippine Islands and the Peninsula*, no matter what may be the form of the period mentioned therein, shall be presented for payment or acceptance within six months at most. With regard to places *situated in the Antilles and other Spanish territories, the period shall be of one year.*

ART. 473. Persons forwarding bills of exchange to points across the seas must send at least second copies in different vessels from those by which the first were sent; and should they prove that the carrying vessels suffered some accident on the sea which delayed their voyage, the time which elapsed up to the date on which said accident was made known in the place of residence of the sender shall not be taken into consideration in the computation of the legal period.

The same effect shall be produced by the real or presumed loss of the vessels.

In accidents which occurred on land and which are well known, the same rule shall be observed with regard to the computation of the legal period.

ART. 474. Drafts drawn at sight, or at a period counted after sight, in foreign countries on places in the territory of Spain shall be presented for collection or acceptance within the forty days following their introduction in the Kingdom, and those drawn after date at the times stipulated therein.

ART. 474. (Philippines.) Drafts drawn at sight in foreign countries on places of the territory of *the Philippine Islands* shall be presented for collection or acceptance within the forty days following their introduction *in the respective island*, and those drawn after date at the times stipulated therein.

ART. 475. Drafts drawn in Spanish territory on foreign countries shall be presented in accordance with the laws in force in the place where they are to be paid.

ART. 475. (Philippines.) Drafts drawn in the *Philippine Islands* on foreign countries shall be presented in accordance with the laws in force in the place where they are to be paid.[1]

ART. 476. The holders of the drafts drawn at a period counted after the date thereof need not be presented for acceptance.

The holder of the draft may, if he deems it convenient to his interests, present it to the person on whom it is drawn before it falls due, and in such case, the latter shall accept it or shall state the reasons for his refusal to do so.

[1] The difference noted between the articles of the code for the Philippines and those for the Peninsula must be simple errata in the former.

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ART. 477. After a draft has been presented for acceptance within the periods fixed in the foregoing articles, the person or persons on whom it is drawn must accept it by means of the words "*I accept*" or "*we accept*," adding the date, or state to the holder their reasons for not accepting it.

If the bill of exchange is drawn at sight or at a period to be counted after sight, and the person on whom it is drawn does not add the date of the acceptance, the period shall run from the day on which the holder could have presented the draft without delay in the mail; and the computation of time being made in this manner, and the draft being due, it is collectable on the day immediately following that of the presentation.

ART. 478. The acceptance of the draft must take place or be refused on the same day on which the holder presents it for this purpose, and the person of whom acceptance is demanded can not retain the draft in his possession under any pretext whatsover.

If the draft presented for acceptance is to be paid in a place other than that of the residence of the person accepting the same, the domicile in which payment is to be made must be stated in the draft.

The person who receives a draft for acceptance, if it is drawn on him, or to have it accepted if it is drawn on a third person, and should retain possession thereof expecting another copy, and shall advise its acceptance by means of a letter, telegram, or other means of writing, shall be liable to the drawer and indorsers thereof in the same manner as if the acceptance had been placed on the draft in question, even though such acceptance has not taken place, or even when he refuses the delivery of the copy accepted to the person legally requesting it.

ART. 479. Bills of exchange can not be accepted conditionally, but the acceptance for a smaller amount than that contained in the draft can be made, in which case it may be protested for the balance of the full amount of the same.

See article 494 of this code.

ART. 480. The acceptance of a draft shall bind the person accepting it to the payment thereof when it falls due, and he shall not be relieved from making the payment on account of not having been supplied with funds by the drawer, nor for any other reason whatsoever except the forgery of the draft.

ART. 481. In case the acceptance of a bill of exchange is refused it shall be protested, and in view of said protest the holder shall have a right to require the drawer or anyone of the indorsers to secure the amount of the draft to his satisfaction, or to deposit the amount thereof, or to reimburse him for the costs of the protest and of the reexchange, discounting the legal rate of interest for the period which still is to elapse until it falls due.

The holder may also, even though the draft has been accepted by the person on whom it is drawn, if the latter allowed other acceptances to be protested, apply before its due date to the other person mentioned therein requesting by protest a better security.

See articles 492, 496, 498, and 519 of this code.

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ART. 482. If the holder of a draft allows the periods fixed according to the cases to elapse without presenting it for acceptance, or does not order it protested, he shall lose all rights to demand the security, deposit, or reimbursement, with the exception of the provisions of article 525.

ART. 483. If the holder of a bill of exchange should not present it for collection on the day it falls due, or, in the absence of payment, does not have it protested on the following day, he shall lose his right to be reimbursed by the indorsers; and with regard to the drawer, the provisions of articles 458 and 460 shall be observed.

The holder shall not lose his right to reimbursement, if it were not possible to present the draft or to take out the protest in time by reason of force majeure.

ART. 484. If the bills of exchange should contain indications made by the drawer or indorsers of other persons of whom acceptance is to be demanded in default of the one indicated in the first place, the holder must, after the protest has been made, if the former has refused acceptance, demand acceptance of the persons mentioned.

ART. 485. Persons who forward drafts from one place to another too late to be presented or protested at the proper time shall be liable for the consequences which may arise by reason thereof.

SECTION SIXTH.

Pledges and their effects.

ART. 486. The payment of a draft may be secured by a written obligation, independent of that contracted by the acceptor and indorser, known by the name of pledge.

The purpose of the pledge is to secure the payment of a draft in whole or in part, and, although it constitutes an obligation distinct and independent of that contracted by the acceptor and indorser, it is a commercial contract and accessory to that of the bill of exchange the payment of which it guarantees, and commercial contracts being governed by the special provisions of the code of commerce, in that article 950 of the same, orders in general terms, that actions arising from drafts prescribe three years after they have fallen due, should they have been protested or not, and that, therefore, there are included in this provision all the actions which may be brought by the guarantor against the acceptor who protested the draft for the payment of the amount he may have been required to pay by reason of the pledge. (Opinion of July 8, 1892. *Gaceta* of October 21.)

ART. 487. If the pledge is drawn up in general terms and without restriction, the person giving it shall be liable for the payment of the draft in the same cases and manner as the person for whom he appears as security; but if the pledge is limited as to a determined time, case, amount, or person it shall not produce further liability than that arising from the terms of the pledge.

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SECTION SEVENTH.

Payments.

ART. 488. Bills of exchange must be paid the holder on the day they fall due, in accordance with article 455.

ART. 489. Bills of exchange must be paid in the money designated therein, and if that could not be procured, in its equivalent, according to the use and customs at the place of payment.

ART. 490. The person paying a bill of exchange before it is due shall not be exempted from paying the amount of the same if the first payment was not made to a legitimate person.

By legitimate person is understood, for the purposes of this article, the person in whose favor the draft is indorsed, provided the indorsement complies with the external formalities required by the commercial law, among which is included the signature of the indorser, according to an opinion of the supreme court of June 27, 1873.

ART. 491. The payment of a bill of exchange payable to bearer which is due shall be considered valid, unless an attachment of the amount thereof by reason of a judicial judgment was previously issued.

With regard to the attachment or provisional deposit of a bill of exchange see in the law of civil procedure for the Peninsula, articles 2128 et seq., and 2089 et seq. of that for Cuba and Porto Rico, and 2049 et seq. of that for the Philippines.

ART. 492. The holder of a draft, who requests its payment, is obliged to satisfy the person paying it as to his identity, by means of instruments or through residents who are acquainted with him or who will guarantee his identity.

The absence of this proof shall not prevent the deposit of the amount of the draft on the day of its presentation in an establishment or with a person accepted by the holder and payor, in which case the establishment or person shall retain the sum deposited in his or its possession until the legitimate payment is made.

The expenses and risks arising from this deposit shall be for the account of the holder of the draft.

ART. 493. The holder of a draft shall not be obliged to collect its amount before it falls due; but should he accept said payment it shall be valid, except in case of the bankruptcy of the payor in the fifteen days following, in accordance with the provisions of article 879.

ART. 494. Neither shall the holder be obliged, even after the draft has fallen due, to receive part and not the whole amount of the same, and only with his consent may a portion of its value be paid and the balance be left standing.

In such case the draft may be protested for the amount which has not been paid, and the holder shall retain possession thereof, making a memorandum on the same of the amount collected and giving a separate receipt for said amount.

ART. 495. Drafts accepted must necessarily be paid on the copy which contains the acceptance.

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If the payment is made on any of the other ones, the person who made the payment shall be liable for the value of the draft to the third person who is the legitimate holder of the acceptance.

ART. 496. The acceptor can not be forced to payment, even though the holder of the copy not containing the acceptance binds himself to give security to the satisfaction of the former; but in the latter case the bearer may demand the deposit and formulate the protest in the terms mentioned in article 498.

If the acceptor voluntarily admits the security and makes the payment, the former shall be legally canceled as soon as the acceptance has prescribed which gave rise to the execution of the security.

ART. 497. Bills of exchange not accepted may be paid after they have fallen due and not before, on the seconds, thirds, or other ones issued in accordance with the provisions of article 448; but not on the copies given in accordance with the provision of article 449, unless one of the copies issued by the drawer is attached thereto.

ART. 498. The person who may have lost a draft, accepted or not, and the person having in his possession an accepted first draft and who is awaiting the second, and has no other copy with which to request the payment, may demand the payor to deposit the amount of the draft in the public establishment devoted to this purpose, or with a person having their mutual confidence, or designated by the judge or court in case of disagreement, and if the person obliged to pay should refuse to make the deposit, the refusal shall be made known by a protest similar to that for nonpayment, and with this instrument the claimant shall preserve his rights against the persons who may be liable for the results of the draft.

The supreme court, in an opinion of April 28, 1879, established the following doctrine: That although it is true that, in accordance with articles 462 and 463 of the code of commerce of 1829, the acceptance of bills of exchange places the acceptor under the obligation to pay them when they fall due, unless their forgery is proven, there must be excepted from this general rule the case prescribed in article 507 (498 of this code), according to which the person who has lost a bill of exchange, accepted or not, of which he has no other copy to request payment, can not do anything further with the payor than to request him to deposit the amount of the same, and if the payor should not consent to make the deposit this refusal shall be made known by means of a protest executed with the same formalities as are required for protests on account of nonpayment; by pursuing this course the claimant shall fully preserve his rights against the persons liable for the legal effects of the draft.

See articles 480 and 522 of this code, articles 2128 et seq. of the law of civil procedure for the Peninsula, article 2089 of that for Cuba and Porto Rico, and article 2049 of that for the Philippines.

ART. 499. If the draft lost should have been drawn abroad or beyond the seas, and the holder proves his ownership by the books and by the correspondence of the person from whom he received the draft, or by a certificate of the broker who may have mediated in the transaction, he shall be entitled to recover its value, if besides this proof he gives sufficient security, the effects of which shall continue until the copy of the draft given by the said drawer is presented or until it has prescribed.

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ART. 499. (Philippines.) If the draft lost should have been drawn abroad or *outside of the territory of the Philippine Islands*, and the holder proves his ownership by the books or by the correspondence of the person from whom he received the draft, or by a certificate of the broker who mediated in the transaction, he shall be entitled to recover its value, if besides this proof he gives sufficient security, the effects of which shall continue until the copy of the draft given by the said drawer is presented or until it has prescribed.[1]

ART. 500. The request for a copy to take the place of the draft lost must be made by the last holder, from the person who transferred it to him, and thus successively from one to another indorser until the drawer is reached.

No person can refuse to lend his name and interposition to the steps taken to procure a new copy, the owner of the draft defraying the expenses which may arise until it is obtained.

ART. 501. The payments made on account of the value of a draft by the person on whom it is drawn shall reduce the liability of the drawer and indorsers in like proportion.

SECTION EIGHTH.

Protests.

ART. 502. The nonacceptance or nonpayment of bills of exchange must be proven by means of a protest, without the first protest having been made exempting the holder from making the second, and without the death of the person on whom it is drawn nor his condition of bankruptcy permitting the holder to not make the protest.

With regard to the article we annotate, the supreme court established in an opinion of March 30, 1875, that a protest for nonacceptance does not exempt the holder of the draft from the duty to protest it again if it is not paid.

ART. 503. All protests on account of nonacceptance or nonpayment place the person who gave rise thereto under the obligation to defray the expenses, losses, and damages.

In an opinion of December 5, 1882, the supreme court stated: The costs of protest and redraft by reason of the nonacceptance and nonpayment of a draft against a person for the value of goods sold which has not been paid, as well as the interest on the amount which was not paid when due, are to be defrayed by the payor and a judgment which exempts him from these obligations violates the provisions of this article.

ART. 504. In order that a protest may be valid, it must necessarily include the following conditions:

1. It must be made before sunset on the day following that on which acceptance or payment was refused; and, if it is a holiday, on the first working day.

[1] With regard to this article see the note to article 475. A similar amendment must be considered made for the islands of Cuba and Porto Rico.

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2. It must be made before a notary public.[1]

3. Said protest must be served on the person on whom the draft was drawn, in the domicile where it is to be paid, if he can be found there, and not being found, on his employees, should he have any; or, in the absence of the latter, on his wife, children, or servants, or on the neighbor referred to in article 505.

4. It must contain an exact copy of the draft, of its acceptance, should it have been accepted, and of all the indorsements and indications included in the same.

5. It must include the demand for payment made of the person who must accept or pay the draft; and should he not have been found, the demand shall be made of the person with whom the transaction is made.

6. It must also contain the answer given to the demand.

7. It must state in the same manner the threat that the expenses and losses are to be paid by the person who occasioned them.

8. It must be signed by the person who makes it, and, should he not know how or not be able to do so, by two attending witnesses.

9. It must state the date and hour when the protest was made.

10. There must be given the person with whom the proceedings were held a copy of the protest drafted on common paper.

With regard to articles 512, 513, and 517 of the code repealed, which accord with the one we annotate, the supreme court declared in an opinion of December 26, 1879, that the notarial instrument being drafted with the solemnities and conditions specified, as the substantial form of the protest, under pain of nullity, no other proof than that of the instrument is admissible, because it is the only evidence admitted in law, and because it being a public right it is not licit for private persons nor for courts to substitute nor alter it.

In another opinion of the same court of February 14, 1890, there was established that, a draft having been accepted on the 20th of December, 1881, and January 9, 1882, having been erroneously written therein and immediately erased and substituted by the correct date, this acceptance is not valid, and by reason of the absence of the inclusion in the instrument of protest of this particular the article we annotate is not violated, nor any other article of the same legal tenor.

ART. 504. (Philippines.) (There is no further difference than that mentioned in the note to the second condition of the article of the code for the Peninsula.)

ART. 505. The legal domicile in which to make the protest shall be—

1. That designated in the draft.

2. In the absence of such designation, the domicile of the payor at the time.

3. In the absence of either, the last at which he was known.

Should the domicile of the person on whom the draft was drawn not appear to be in any of the three places above cited, a neighbor having an office in the place where the acceptance and payment is to be made shall be applied to, with whom the formalities shall be gone through and to whom the copy shall be delivered.

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[1] After "public," the article amended, for the Philippines states, "or the person discharging his duties."

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ART. 506. No matter at what time the protest may be made, the notaries[1] shall retain possession of the drafts, without delivering the latter or the certified copy of the protest to the holder, until sunset of the day on which it is made; and if the protest was made for nonpayment, and the payor in the meantime appears in order to satisfy the amount of the draft and the costs of the protest, the payment shall be accepted, the draft being delivered with a memorandum thereon stating that the protest has been paid and canceled.

ART. 506. (Philippines.) (The difference is indicated in the note to this article of the code for the Peninsula.)

ART. 507. If the protested draft should contain indications, there shall be included in the protest the demand made of the persons indicated and their answers and the acceptance or payment, if they should have done so.

In such cases, if the indications are made for the same place, the period for the conclusion and delivery of the protest shall be extended to 11 o'clock a. m. of the following working-day.

If the indications are for a different place the protest shall be closed as if it did not contain any, the holder of the draft being permitted to apply to them within a period not to exceed twice the time required by the mail to reach said place from the first one designated, and may, through a notary, demand payment in their order of the persons in each place, renewing the protest with the same if there should be occasion therefor.

The acceptance of a bill of exchange by the person indicated, in default of the person on whom it is drawn, binds the person who does so for the payment of the draft when it falls due, in accordance with the customs of the place, and in a proper case for the interest or expenses of redraft in accordance with the provisions of the code of commerce. (Opinion of June 13, 1891. *Gaceta* of November 9.)

ART. 508. All the formalities of a protest of a bill of exchange must be drafted in a single instrument, being entered successively in the order they take place.

The notary[2] shall give a certified copy of this instrument to the holder, returning the original draft to him.

ART. 508. (Philippines.) (See the note to the text of the same article for the Peninsula.)

ART. 509. No act or instrument can supply the omission and absence of the protest for the preservation of the action which may be instituted by the holder against the persons liable for the legal effects of the draft.

ART. 510. If the person on whom the draft was drawn should become a bankrupt, it may be protested for nonpayment even before it falls due; and after being protested, the holder may make use of his right of action against the persons liable for the legal effects of the draft.

See articles 879 and 908 et seq. of this code.

[1] *Or the persons discharging their duties*, adds the same article amended for the Philippines.

[2] *Or the person discharging his duties*, according to the article amended for the Philippines.

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SECTION NINTH.

Intervention in the acceptance and payment.

ART. 511. If after a bill of exchange should be protested for nonacceptance or nonpayment a third person should appear offering to accept or pay the same for the account of the drawer or for the account of any of the indorsers, even though there is no prior mandate to do so, the intervention for the acceptance or payment shall be admitted, one or the other being entered immediately after the protest, under the signature of the person who intervened and that of the notary,[1] the name of the person for whose account the intervention took place being stated in the instrument.

If several persons appear to intervene, the person doing so for the drawer shall be preferred; and if all of them desire to intervene for indorsers, the one who does so for the prior indorser shall be preferred.

ART. 511. (Philippines.) (See the note to the same article for the Peninsula.)

ART. 512. The person who intervenes in the protest of a bill of exchange, if he accepts it, shall be liable for its payment in the same manner as if it were drawn on him, being obliged to give notice of its acceptance by the first mail to the person for whom he intervened; and should he pay it, he shall be subrogated to the rights of the holder, complying with the obligations prescribed for the latter, with the following limitations:

1. If he pays said draft for the account of the drawer, the latter only shall be liable to him for the amount disbursed, the indorsers being free.

2. If he pays it for the account of one of the latter, he shall be entitled to bring an action against the drawer, against the indorser for whose account he intervened, and against the others who precede said indorser in the order of their indorsements, but not against those who may be subsequent.

ART. 513. The intervention in the acceptance shall not deprive the holder of the draft protested of the right to demand of the drawer or of the indorsers the security for the results.

ART. 514. If the person who did not accept a draft, giving rise to a protest thereby, should appear to pay it when it falls due, his payment shall be accepted in preference to that of the person who intervened or wished to intervene for the acceptance or payment; but the expenses caused by the nonacceptance of the draft at the proper time shall be for his account.

ART. 515. A person who intervenes in the payment of a draft affected in any manner, shall not have any further right of action than that which the holder would have against the drawer who did not pro-

[1] *Or the person discharging his duties*, adds the same article amended for the Philippines.

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vide funds at the proper time, or against the person who retains possession of the value of the draft without having made its delivery or reimbursement.

SECTION TENTH.

Actions which may be instituted by the holder of a bill of exchange.

ART. 516. In default of the payment of a bill of exchange, presented and protested at the proper time and in the proper manner, the holder shall have a right to demand of the acceptor, of the drawer, or of any of the indorsers the reimbursement for the costs of protest and reexchange; but after an action has been instituted against one of them, it can not be brought against the rest except in the case of the insolvency of the defendant.

See article 487 and articles 518 et seq.

The supreme court in an opinion of December 15, 1880, established as doctrine: That the obligation imposed by the taker of a draft by the clauses "value on account" and "value understood" is subordinated to the form and conditions agreed upon in making the exchange contract, and it is necessary to prove it by other means than by the draft itself, in which it is only indicated.

The same court, in another opinion rendered by its third chamber, February 28, 1885, declared that the judge of the place where a draft was accepted and where it should be paid must take cognizance of a suit to secure execution based on a bill of exchange.

The obligation of the drawer of a bill of exchange which has been protested to pay it must be complied with in the place where its value was delivered. (Opinion of March 9, 1886.)

According to an opinion of October 11, 1889, the article we annotate refers to the suit instituted by the holder of a draft and not to that which may be instituted by an indorser, which is governed by articles 520 and 527 of this code.

The contract of a bill of exchange is consummated by the acceptance of the draft, which places the acceptor under the obligation to pay it, the place for the fulfillment of the obligation being that indicated by the drawer as the domicile of the payor, in which domicile it is to be paid, and, therefore, that the judge of competent jurisdiction to take cognizance of the suits which may arise by reason of the protest is the one of the place where this is done. (Opinion of August 21, 1890.)

The article we annotate, which prohibits an action against the drawer after a suit against one of the indorsers has been instituted and before the insolvency of the latter is proven, is therefore not applicable to cases of bankruptcy. (Opinion of the supreme court of December 31, 1888, and January 2, 1889. *Gacetas* of April 29 and 30.)

ART. 517. If the holder of a protested draft would direct his action against the acceptor before the drawer and indorsers, he shall notify all of them of the protest through a notary public[1] within the periods mentioned in the fifth section of this title, for the purpose of obtaining their acceptance; and if it is directed against any of the latter a similar notification shall be made within the same periods to the rest.

The indorsers to whom this notification is not made shall be exempted from liability, even when the defendant is insolvent, and the same shall

[1] In the same article amended for the Philippines there is added, *or the person discharging his duties.*

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be understood with regard to the drawer who proves that he made the provision of funds at the proper time.

See articles 452, 453, 454, and 520 of this code.

ART. 517. (Philippines.) (See the note to this article for the Peninsula.)

ART. 518. If an execution has been had against the property of the debtor for the payment or reimbursement of a draft, and the holder should have been able to realize only a part of his credit, he may bring an action against the rest for the balance of his account until he is fully reimbursed, in the manner established in article 516.

The same shall be done in case the person proceeded against is declared in bankruptcy, and if all the persons liable for the draft are in similar circumstances, the claimant shall be entitled to recover from each set of assets the corresponding dividend until his credit is totally cancelled.

ART. 519. The indorser who pays a protested draft shall subrogate himself to the rights of the holder thereof, viz:

1. If the protest were for nonacceptance, against the drawer and the other indorsers who precede him in order, for the security of the value of the draft, or the deposit in the absence of security.

2. If it were for nonpayment, against the said drawer, acceptor, and prior indorsers for the recovery of the amount of the draft and of all the costs he may have paid.

If the drawer and the indorser both should appear to make the payment, the drawer shall be preferred; and if the indorsers only should appear, the one of a prior date.

See article 513 of this code.

ART. 520. The drawer as well as any of the indorsers of a protested bill of exchange may demand, as soon as they receive notice of the protest, that the holder receive the amount with the legitimate expenses, and deliver to them the draft with the protest and the account of the redraft.

It is not optional for the holder of a bill of exchange to deliver the latter, with or without the account of the redraft, to the indorser who wishes to pay it, nor can he state that no costs were incurred in protesting the same. (Opinion of October 11, 1889.)

See in the fourth paragraph of the addition to article 516 of this code, the opinion, also of October 11, 1889, on account of its relation to the one we annotate.

ART. 521. The action arising from bills of exchange to recover, in the respective cases, of the drawer, acceptors, or indorsers the payment or reimbursement, shall include an attachment, which must be issued, in view of the draft and of the protest, without further requisite than the judicial acknowledgment of their signatures by the drawer and indorsers proceeded against. A similar action may be brought against the acceptor to compel him to make the payment.

The acknowledgment of the signature shall not be necessary to carry out the attachment against the acceptor when no charge of forgery has been made in the instrument of protest for nonpayment.

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The action including an attachment, must be instituted, when bills of exchange are in question, in the place where they were accepted, which is where they must be paid. (Opinion of February 28, 1885.)

See the last two paragraphs of the addition to article 516 of this code.

ART. 522. The action brought to secure the guaranty or the deposit of the amount of a bill of exchange, in the cases in which it is proper with regard to the provisions of articles 481, 492, and 498 of this code, shall be in accordance with the proceedings prescribed in Book 3, part 2, title 3, of the law of civil procedure, it being sufficient to accompany to the claim in the first case the protest showing the nonacceptance of the draft.

The law of civil procedure of 1881, in force in the Peninsula, in its articles 2128 to 2130, that for Cuba and Porto Rico, articles 2080 to 2091, and that for the Philippines in articles 2049 to 2051, treat "of the attachment and provisional deposit of the amount of a bill of exchange."

ART. 523. Against the actions including attachment by reason of bills of exchange, no further exceptions shall be admitted but those mentioned in the law of civil procedure.

According to article 1465 of the law of civil procedure for the Peninsula, 1463 of that for Cuba and Porto Rico, and 1447 of that for the Philippines, in actions to secure immediate execution of judgments on bills of exchange the following exceptions only shall be admissible: Forgery of the writ of attachment or of the instrument which may have given it the force of such; payment; compensation of net credit which appears from the instrument which includes attachment; prescription and reduction or extension of time for payment thereof.

ART. 524. The amount which a creditor remits or releases a debtor against whom an action has been brought from the payment or reimbursement of a bill of exchange, shall be understood as extended also to the rest who may be liable for the effects of the collection.

ART. 525. The prescription of a protested draft shall not have any effect by reason of nonpresentation, protest, or its notification at the times which have been stated, with regard to the drawer or indorser who, after said periods have elapsed, has balanced the amount of the draft in his accounts with the debtor or reimbursed him with bonds or securities belonging to him.

ART. 526. Bills of exchange protested by reason of nonpayment shall earn interest in favor of the holders thereof from the date of the protest.

With regard to the contents of this article, which correspond to article 548 of the old code, the supreme court established in an opinion of January 18, 1881, the following doctrine: The effects of delay in the fulfillment of commercial obligations begin from the instant the creditor demands payment of the debtor judicially or through a notary.

SECTION ELEVENTH.

Reexchange and redraft.

ART. 527. The holder of a protested bill of exchange may recover the amount thereof and the costs of protest and reexchange by drawing a new bill against the drawer or one of its indorsers and attaching

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to this draft the original one, as well as the certified copy of the protest and the account of the redraft, which shall only contain the following clauses:

1. The amount of the bill of exchange protested.
2. Protest costs.
3. Stamp tax for the redraft.
4. Exchange according to the customs of the place.
5. Brokerage of the transaction.
6. Expenses of the correspondence.
7. Loss by reason of the reexchange.

In this account there shall be stated the name of the person on whom the redraft is made.

See in paragraph 4 of the addition to article 516 of this code, the opinion of October 11, 1889, on account of the relation it bears to the one we annotate.

ART. 528. All the items of the redraft shall conform to the usages of the place, and the reexchange to the current rate on the day of the draft. This will be proven by the official quotation on exchange, or by means of a certificate of an official agent or broker, should there be one, and in their absence by that of two recorded merchants.

ART. 529. Only one account or redraft can be made for each bill of exchange, which account shall be paid by the indorsers of one or the other until it is extinguished by means of the reimbursement of the drawer.

More than one reexchange shall not be charged, and the amount thereof shall be graduated by increasing or reducing the amount due from each person, according as to whether the paper on the place to which the redraft is addressed is negotiated in that of its domicile with a premium or with discount, which circumstance shall be proven by means of a certificate of an agent, broker, or merchant.

ART. 530. The holder of a redraft can not demand legal interest thereon until after the day he demands payment of the person who is to pay it, in the manner prescribed in article 63 of this code.

TITLE XI.

DRAFTS, BILLS, AND PROMISSORY NOTES PAYABLE TO ORDER, AND CHECKS.

SECTION FIRST.

Drafts, bills, and promissory notes payable to order.[1]

ART. 531. The drafts, bills, and promissory notes payable to order must contain—

1. The specific name of the draft, bill, or promissory note.
2. The date of issue.

[1] With regard to this subject, the supreme court has rendered several opinions, the doctrine of which is of more or less general application and of which we shall indicate the most important:

In the opinions of June 28, 1859, and May 19, 1870, it established: That promissory notes and their

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3. The amount.

4. The time of payment.

5. The person to whose order the payment is to be made, and, in drafts, the name and domicile of the person against whom they are drawn.

6. The place where the payment is to be made.

7. The origin and kind of value they represent.

8. The signature of the person making the draft, and, in bills or promissory notes, the person who contracts the obligation to pay them.

Bills which are to be paid in a place other than that of the residence of the payor, shall indicate a domicile for the payment.

The competent judge to take cognizance of a suit instituted with regard to a promissory note is the one of the place where it is to be paid, even though indorsements may have been placed thereon which will not alter the obligation in any manner whatsoever. (Opinion of July 10, 1889.)

In an opinion of the supreme court, rendered on November 14, 1872, there is established as doctrine: That promissory notes to order which do not contain the requisites of the name and domicile required in drafts shall not be considered commercial, and are reduced to the class of simple promises to pay, of effect only from the point of view of the common law; and in that of December 12, 1889, there is stated that commercial promissory notes are governed by the code of commerce, even though the persons interested are not merchants, and the drawer can not exempt himself from the payment by making use of the exception *non numerata pecunia*, which is not applicable to these instruments. (*Gaceta* of January 22, 1890.)

ART. 532. Drafts payable to order between merchants and the bills or promissory notes likewise payable to order, which arise from commercial transactions, shall produce the same obligations and effects as bills of exchange, except with regard to acceptance, which is a quality of the latter only.

The bills or promissory notes which are not payable to order shall be considered simple promises to pay subject to the common law or the commercial law according to their nature, excepting the provisions contained in the following title.

The suspension of payments made by the indorsers and drawers of a promissory note which combines the requisites mentioned in the article we annotate, in order to be considered commercial, permits the holder of the same who appears at the same time as the legal creditor of the drawer and of the indorsers in suits of suspension instituted by the same; and the opinion which does not acknowledge this violates the provisions of this article in relation with those of articles 516, 518, and 524. (Opinion of February 26, 1892. *Gaceta* of April 16.)

Promissory notes payable to order referred to in this article are not those the amount of which is to be devoted to commerce, but those which arise from com-

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securities must conform to the character of the contracts which it was desired to insure or guarantee in making them, the former being subject to the natural rules governing said contracts.

In the opinion of March 28, 1860: That the bills or promissory notes, although they produce the same obligations and effects of drafts, are not absolutely identical therewith.

In another one of November 14, 1862: That the principal obligation of the drawer, as well as the subsidiary one of the person guaranteeing its fulfillment, are always common; and in that of March 18, 1872: That when the promissory notes can not be removed from a bill of sale they can not be considered as exchange instruments, because to consider them such it is necessary that they be independent of the sale and not have any relation thereto, unless they are the consequence of the novation of the contract.

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mercial transactions, the latter only having the judicial value of commercial instruments. (Opinion of November 24, 1894. *Gácetas* of February 26 and 27, 1895.)

The same doctrine is contained in the opinion of April 10, 1894, *Gaceta* of September 21, inserted as an addition to article 311.

ART. 533. The indorsements on drafts and promissory notes payable to order must contain the same statements as those on bills of exchange.

SECTION SECOND.

Checks.

ART. 534. The order to pay, known in commerce by the name of check, is an instrument which permits the maker to withdraw for his benefit or for that of a third person the whole or part of the funds he may have at his disposal in the hands of the depositary.

The issue of a check to which the foregoing article refers or that of a stub of a current account, treated of in article 543, is a commercial act, and the instrument arising therefrom, or which it represents, must necessarily have a commercial character for all legal effects, and its forgery shall be punished in accordance with article 315 of the penal code and not by article 548 of the same. (Opinion of the second chamber of the supreme court of June 17, 1890. *Gaceta* of October 22.)

ART. 535. The check must contain:

The name and the signature of the maker, and the name of the person on whom it is drawn and his domicile, amount and date of issue, which must be written out, and if payable to bearer, to a determined person, or to order; in the latter case it shall be transferable by indorsement.

ART. 536. It may be drawn in the same place it is to be paid, or in a different place; but the maker shall be obliged to previously have the funds on deposit with the person on whom it is drawn.

ART. 537. The holder of a check must present it for payment within five days of its issue, if drawn in the same place, and within eight days[1] if drawn in another one.

The holder who allows this period to elapse, shall lose his right of action against the indorsers as well as against the maker, if the funds deposited with the person on whom it is drawn should disappear because the latter has suspended payments or is a bankrupt.

ART. 537. (Philippines.) (See the note to this article for the Peninsula.)

ART. 538. The period of eight days fixed in the foregoing article for checks issued from place to place shall be understood as extended to twelve days after its date for those drawn abroad.

ART. 538. (Philippines.) The period of eight days *following the arrival of the mail fixed in the foregoing article shall also be understood* for those drawn abroad.

ART. 539. Payment of a check shall be demanded of the depositary on presentation.

[1] *From the arrival of the mail, if drawn in a different place*, adds the text of this article amended for the Philippines.

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The person to whom payment is made shall state in his receipt his name and the date of payment.

ART. 540. Duplicates of checks can not be issued unless the originals have been previously canceled after they have lapsed and the agreement thereto of the depositary has been obtained.

ART. 541 The maker or any legal holder of a check shall be entitled to indicate therein that it be paid to a certain banker or institution, which he shall do by writing across the back the name of said banker or institution, or only the words "and company."

The payment made to a person other than the banker or institution shall not exempt the person on whom it is drawn, if the payment was not correctly made.

ART. 542. The provisions contained in this code relating to the joint liability of the maker and indorsers, and to protests, as well as to the exercise of the actions arising from bills of exchange, shall be applicable to these instruments.

ART. 543. The foregoing provisions, in so far as they are applicable, shall govern pay orders known by the name of stubs, in current account, of banks or institutions.

See the note to article 534.

In an opinion of June 5, 1886, the supreme court declared that in accordance with the regulations of the Bank of Spain, in order that stubs of current accounts and orders for transfers may be carried out, they must be signed by the persons in whose name the account stands, the amount which they represent must be written out before the signature, and said signature must be compared with the corresponding one of the register of current accounts, and, therefore, the bank shall be liable for the loss caused by the payment of a stub, the signature of which was a forgery and in which the amount was not repeated, written out, as is stated.

TITLE XII.

INSTRUMENTS PAYABLE TO BEARER, AND FORGERY, ROBBERY, THEFT, OR LOSS OF THE SAME.

SECTION FIRST.

Instruments payable to bearer.

ART. 544. All instruments payable to order, treated of in the foregoing title, may be issued payable to bearer, and shall, the same as the former, include an attachment from the day they fall due, without further requisite than the acknowledgment of the signature of the person liable for the payment.

The due date shall be counted according to the rules established for instruments issued payable to order, and against the action to secure judgment no exceptions but those mentioned in article 523 shall be admitted.

See article 1464 of the law of civil procedure for the Peninsula, as well as articles 1465, 1462, and 1463 of that for Cuba and Porto Rico, and articles 1446 and 1447 of that for the Philippines.

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ART. 545. Other instruments payable to bearer, be they either the ones mentioned in article 68 or bank notes, shares, or obligations of other banks, mortgage loan, agricultural loan, or of associations handling public securities, railroad companies, companies of public works, industrial or commercial associations, or of any other kind whatsoever, issued in accordance with the laws and provisions of this code, shall produce the following effects:

1. They shall include attachment, as well as their coupons, from the day the respective obligation falls due, or when they are presented, if no due date has been affixed.

2. They shall be transferable by the simple delivery of the instrument.

3. They are not subject to restitution if they were negotiated on exchange with the intervention of a licensed agent, and where there is no such agent with the intervention of a notary public[1] or of a commercial broker.

The rights and actions of the legitimate owner against the vendor or other persons liable according to the laws for the acts which deprived him of the possession and ownership of the instruments sold, shall be reserved.

Although No. 2 of the article we annotate declares that instruments payable to bearer are transferable by the simple delivery of the instrument, it adds in the third that they shall not be subject to restitution if they were negotiated in the manner stated therein, and in the latter part of said No. 3 it reserves the rights and actions of the legitimate owner against the vendor or other persons liable according to law for the acts which deprived him of the possession and ownership of the instruments sold; which demonstrates that the novation sanctioned in these precepts is reduced to making the instruments acquired by reason of said negotiation not subject to restitution, without extending said privilege to those obtained by other means, which, therefore, are subject to the general rules of law. (Opinion of February 9, 1882. *Gaceta* of March 15.)

The exception referred to in No. 3 of this article shall not be admissible in a suit if the document by which the acquisition is proved does not contain a note to the effect that the act or contract celebrated subsequently to April 4, 1893, has been submitted to the payment of the tax on property rights. (Royal decree of the same date. *Gaceta* of the 6th.)

Although the instruments of the public debt, being payable to bearer, can be transferred by their mere delivery, and the simple possession of the instrument implies its ownership, this does not prevent that, in order to prevent the event of a restitution and for a greater guaranty and security of the public credit, its acquisition be made to appear in the special manner prescribed in the law of March 30, 1861, in that of August 29, 1873, and in article 543, No. 3, of the code of commerce, without prejudice to the general and common effects of the kind of instruments payable to bearer, and to the consequent risk run by the person who does not comply in their negotiation with the conditions of guaranty which the exchange agent, or in his absence the commercial broker or notary, secure with their intervention. The provisions of articles 548, 560, and 561 of the code of commerce, do not modify in any manner whatsoever nor can they modify, according to the text of article 566, the conditions with which instruments payable to bearer issued by the

[1] The same article amended for the Philippines adds: *or the person discharging his duties.*

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State are to be negotiated, in order not to be subject to restitution, and therefore said articles can only be applied, if after complaining of the loss or theft of the instruments, they have been negotiated through an agent, but not when this did not take place. The supreme court declared in accordance with article 32 of the law of February 8, 1854, that loans secured by public instruments are exchange transactions which are made with the intervention of exchange agents, and that instruments payable to bearer are not subject to restitution provided they are negotiated on exchange with the legal formalities, where there is an exchange, and where there is none, that a notary public or commercial broker mediated in the transaction. The intervention of an exchange agent, as well as that of a commercial broker and that of a notary in the negotiation of the public instruments of the debt, can not take place in any manner whatsoever except in that prescribed, either in the exchange law or in the code of commerce, or in the notarial law, according to the class of official who took part therein, because said form constitute at the same time the guaranty of the intervention and is the basis of all the liabilities as well as of all the effects which arise; it is not sufficient, therefore, in order to consider a negotiation of securities of the State through any of said officials to be considered as consummated, by reason of the circumstance of an agent or broker having taken part therein in a private capacity, without authenticating nor drafting any instrument whatsoever, nor making the proper entry in their books. (Opinion of May 30, 1895. *Gaceta* of September 10.)

ART. 545. (Philippines.) (See the note to the text of this article for the Peninsula.)

ART. 546. The holder of an instrument payable to bearer shall have a right to compare it with the originals whenever he considers it advisable.

SECTION SECOND.

Robbery, theft, or loss of instruments of credit and those payable to bearer.

ART. 547. The following shall be instruments of credit payable to bearer for the effects of this section, according to the cases:

1. Instruments of credit against the State, provinces, or municipalities, legally issued.[1]

2. Those issued by foreign countries the quotation of which has been authorized by the Government, on the recommendation of the board of directors of the association of agents.

3. Instruments of credit payable to bearer, of foreign enterprises, established in accordance with the law of the State to which they belong.

4. Instruments of credit payable to bearer issued in accordance with the laws of their association by national establishments, associations, or enterprises.

5. Those issued by private parties, provided they are mortgage or are sufficiently secured.

ART. 547. (Cuba and Porto Rico.) The following shall be instruments of credit payable to bearer, for the effects of this section, according to the cases:

[1] Although nothing is said in the amendment, we believe that the amendment made with regard to Cuba and Porto Rico must be understood as made for the Philippines also.

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1. Instruments of credit against the State, *the islands of Cuba and Porto Rico*, the provinces and municipalities *of the nation* legally issued.

2. Those issued by foreign countries the quotation of which has been authorized by the Government, on the recommendation of the board of directors of the association of agents.

3. Instruments of credit payable to bearer, of foreign enterprises, established in accordance with the law of the State to which they belong.

4. Instruments of credit payable to bearer issued in accordance with the laws of their association by national establishments, associations, or enterprises.

5. Those issued by private parties, provided they are mortgage or are sufficiently secured.

ART. 547. (Philippines). (See the note to the text of this article for the Peninsula.)

ART. 548. The dispossessed owner, no matter for what cause it may be, may apply to the judge or court of competent jurisdiction, asking that the principal, interest, or dividends due or about to become due, be paid a third person, as well as in order to prevent the ownership of the instrument from being transferred to another person, or he may request that a duplicate be issued him.

The judge or court exercising jurisdiction in the district in which the debtor establishment or person is situated, shall be of competent jurisdiction.

See the opinion of May 30, 1895, in the addition to article 545.

ART. 549. In the complaint made to the judge or court by the dispossessed owner he must state the name, character, nominal value, number if it should have one, and the series of the instrument; and furthermore, if it were possible, the time and place he acquired ownership and the manner of acquisition thereof, the time and place where he received the last interest or dividends, and the circumstances attending the dispossession.

The person dispossessed, in making the complaint, shall indicate within the district in which the judge or court of competent jurisdiction exercises the domicile where he is to be served with all notifications.

The provisions of article 104 of this code are closely related to the provisions of the foregoing one, as well as to articles 56 and 57 of the regulations for the organization and government of commercial exchanges referred to in both, the mode of procedure in order to inform agents of the effects of their civil liability for the instruments and securities they negotiate being therein established.

ART. 550. If the complaint relates only to the payment of the principal or of the interest or dividends due or about to fall due, the judge or court, when the legitimacy of the acquisition of the instrument has been proved, must admit said complaint, immediately ordering—

1. That the complaint be immediately published in the *Gaceta de Madrid*, in the *Boletin oficial* of the province, and in the *Diario oficial de*

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avisos of the place, should there be one, fixing a short period within which the holder of the instrument may appear.

2. That it be communicated to the managing office of the institution which issued the instrument, or to the association or private person from whom it originates, in order that the payment of the principal or interest may be suspended.

ART. 550. (Cuba and Porto Rico.) If the complaint should relate only to the payment of the principal or interest of dividends which are due or are about to become due, the judge or court, when the legality of the acquisition of the instrument has been proved, must admit said complaint, immediately ordering—

1. That the complaint be immediately published in the *Gaceta oficial of the island of Cuba or in that of Porto Rico*, in a proper case, in the *Boletin oficial* of the province, in the *Diario de avisos* of the place, should there be one, or in the absence thereof in one or two of the newspapers having the largest circulation, in the opinion of the judge, fixing a short period within which the holder of the instrument may appear.

2. That it be communicated to the managing office of the institution which issued the instrument, or to the association or private person from whom it originates, in order that the payment of the principal or interest may be suspended.

ART. 550. (Philippines.) If the complaint relates only to the payment of the principal or interest or dividends which are due or about to become due, the judge or court, when the legality of the acquisition of the instrument has been proved, must admit said complaint, immediately ordering—

1. That the complaint be immdiately published in the *Gacetas of Madrid and Manila*, in the *Boletin oficial* of the province, and in the *Diario oficial de Avisos* of the place, should there be one, fixing a short period within which the holder of the instrument may appear.

2. That it be communicated to the managing office of the institution which issued the instrument, or to the association or private person from whom it originates, in order that the payment of the principal or interest may be suspended.

ART. 551. The request shall be heard in the presence of a member of the department of public prosecution, and in the manner prescribed in the law of civil procedure for interlocutory issues.

The provisions of the law of civil procedure referred to in the article we annotate are contained in title 3, book 2, of the said law, or in articles 741 to 761.

ART. 552. After one year has elapsed since the complaint without anybody contradicting it, and if in the interval the dividends have been distributed, the complainant may request the judge or court for authority not only to recover the interest or dividends due or about to become due, in the proportion and means of their collectibility, but also the principal of the instruments, if it is demandable.

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ART. 553. After the authorization has been granted by the judge or court, the person dispossessed must, before receiving the interest or dividends, or the principal, give sufficient security to cover the amount of the annuities recoverable, and, furthermore, twice the amount of the last annuity due.

After two years have elapsed from the date of the authorization without the complainant being contradicted, the guaranty shall be canceled.

If the complainant does not wish to or can not give the security, the debtor association or private person may request the deposit of the interest or dividends past due or of the principal recoverable, and to receive after the two years the securities deposited if there be no objection.

ART. 554. If the principal should be recoverable after the authorization, it may be demanded under security or the deposit may be required.

After five years have elapsed, without opposition, from the date of the authorization, or ten from the date it was demandable, the person dispossessed may receive the securities deposited.

ART. 555. The solvency of the guaranty shall be passed upon by the judges and courts.

The complainant may give security in bonds of the State, recovering them at the termination of the period fixed for the guaranty.

ART. 556. If the complaint relates to coupons payable to bearer separated from the instrument, and the claim should not be overruled, the claimant may recover the amount of the coupons after three years have elapsed, counted from the date of the judicial declaration admitting the complaint.

The claim referred to in this article can not be that mentioned in the second paragraph of article 554, but that instituted by the complainant in accordance with the provisions of article 548.

ART. 557. The payments made to the person dispossessed in accordance with the rules above established exempt the debtor from all liability; and a third person who considers himself injured shall only retain the right of personal action against the claimant who acted without just cause.

ART. 558. If, before the exemption of the debtor, a third holder should appear with the instruments the subject of the complaint, the former must retain possession thereof and inform the judge or court and the first claimant, at the same time stating the name, residence, or manner in which the third holder may be found.

The appearance of a third person shall suspend the effects of the claim until it is decided by the judge or court.

With regard to the manner of drafting and addressing the complaints referred to in this article, see the provisions of articles 57 and 59 of the exchange regulations in force of December 21, 1885.

ART. 559. If the purpose of the complaint should be to prevent the negotiation or transfer of instruments which can be quoted, the person

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dispossessed may address himself to the board of directors of the association of agents, complaining of the robbery, theft, or loss, and accompanying thereto a memorandum giving the series and numbers of the instruments lost, time of their acquisition, and manner in which they were acquired.

The board of directors, on the same day of the exchange or on the following one, shall affix a notice to the board, and shall announce at the opening of the exchange the complaint made, and also advise the other boards of directors of exchanges of said complaint.

A similar notice shall be inserted at the expense of the complainant in the *Gaceta* of Madrid, in the *Boletin oficial* of the province, and in the *Diaria oficial de Avisos* of the respective town.

ART. 559. (Cuba and Puerto Rico.) If the purpose of the complaint should be to prevent the negotiation or transfer of instruments which can be quoted, the person dispossessed may address himself to the board of directors of the association of agents, *and, in the absence of the latter, to the board of the association of commercial brokers,* complaining of the robbery, theft, or loss, and accompanying thereto a memorandum giving the series and numbers of the instruments lost, time of their acquisition, and manner in which they were acquired.

The board of directors, on the same day of the exchange or on the following one, shall affix a notice to the board, and shall announce at the opening of the exchange the complaint made, and also advise the other boards of directors of exchanges of said complaint.

A similar notice shall be inserted, at the expense of the complainant, in the *official Gaceta of the island of Cuba or in that of Puerto Rico, in a proper case,* in the *Boletín oficial* of the province, and in the *Diario de Avisos* of the respective town, *should there be one, or in one or two of the newspapers having the largest circulation, in the opinion of the judge.*

ART. 559. (Philippines.) If the purpose of the complaint should be to prevent the negotiation or transfer of instruments which can be quoted, the person dispossessed may address himself to the board of directors of the association of agents, and, in the absence of the latter, to the board of the association of commercial brokers, complaining of the robbery, theft, or loss, and accompanying thereto a memorandum giving the series and numbers of the instruments lost, time of their acquisition, and manner in which they were acquired.

The board of directors, on the same day of the exchange or on the following one, shall affix a notice to the board, and shall announce at the opening of the exchange the complaint made, and also advise the other boards of directors of exchanges of said complaint.

In the absence of a board of directors of the association of agents or of commercial brokers, the person dispossessed shall complain of the robbery, theft, or loss in the manner prescribed in this article, to the Judge of First Instance of his domicile, which authority shall make it public by means of

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letters rogatory to the board of directors of the association of agents of Madrid.

The complaints to which this article limits itself shall be inserted at the expense of the complainant in the official "Gaceta" of Manila, and in one or two of the newspapers having the largest circulation, in the opinion of the judge.

ART. 560. The negotiation of securities lost or stolen, which take place after the announcements referred to in the foregoing article, shall be void, and the person acquiring the same shall not enjoy the right of remaining in undisturbed possession thereof; but the right of the third person against the vendor and against the agent who took part in the transaction shall be reserved.

See the opinion of May 30, 1895, in the addition to article 545.

ART. 561. In the period of nine days the person who complained of the robbery, theft, or loss of the instruments must obtain the corresponding decree of the judge or court, ratifying the prohibition to negotiate or alienate the said instruments.

If this decree should not be communicated to the board of directors within the period of nine days, the board shall annul the announcement, and the transfer of the instruments which may subsequently be made shall be valid.

Let it not be forgotten that when the announcements mentioned in article 559, referred to in articles 560 and 561, are made by telegraph, the provisions of article 58 of the Exchange Regulations cited must be complied with.

ART. 561. (Philippines.) *If the complainant should apply directly to the board of directors of the exchange of Madrid, or of other exchanges, he shall be required, in order for the complaint to have effect, to communicate it to the judge of his domicile in order that the latter may ratify the prohibition to negotiate or transfer the instruments. If the decision rendered should not be communicated to the board of directors by the first mail after the complainant gave notice, the board shall annul the notice after nine days from the date of the arrival of the mail at the place of residence of the board of directors have elapsed,* and the transfer of the instruments which may subsequently be made shall be valid.

ART. 562. After five years have elapsed, to be counted from the date of the publications made by virtue of the provisions of articles 550 and 559, and from that of the ratification of the judge or court referred to in article 561, without any objection to the complaint having been made, the judge or court shall declare the nullity of the instrument stolen or lost, and shall communicate it to the official managing office, association, or private person from whom it came, ordering the issue of a duplicate to the person who appears to be its legal owner.

If within the five years a third complainant should appear, the period shall be suspended until the decision of the judges or courts is rendered.

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ART. 563. The duplicate shall bear the same number as the original instrument; it shall state that it was issued in duplicate; it shall produce the same effects as the former, and shall be negotiable under the same conditions.

The issue of the duplicate shall annul the original instrument, and this shall be stated in the entries or records relating thereto.

ART. 564. If the complaint of the person who suffered the loss should be for the purpose of recovering the principal, dividends, or coupons, and also to prevent the negotiation or transfer on exchange of the instruments which can be quoted thereon, the rules established for each one of the foregoing articles shall be observed, according to the cases.

See the provisions contained in the second paragraph of article 56 of the exchange regulations cited.

ART. 565. Notwithstanding the provisions contained in this section, if the person dispossessed should have acquired the instruments on exchange, and if he attaches to the complaint the certificate of the agent in which the instruments are detailed or specified in such manner that they can be identified before applying to the judge or court, he may do so to the debtor institution or person, and even to the board of directors of the association of agents objecting to making the payment and requesting that the proper notices be issued. In such case the debtor institution or person and the board of directors shall be obliged to act as if the court or judge had notified them of the admission of the complaint and that it has been passed upon.

If the judge or court, within the period of one month, does not order the retention or publication, the complaint made by the person dispossessed shall have no effect, and the debtor institution or person and the board of directors shall be exempted from all liability.

With regard to the provisions of this article, see article 550 of this code and article 57 of the exchange regulations in force.

ART. 566. The foregoing provisions shall not be applicable to bank notes of the Bank of Spain, nor to the notes of the same kind issued by institutions subject to the same rule, nor to instruments payable to bearer issued by the State, which are governed by the special laws, decrees, or regulations.[1]

The bonds of the public debt of Spain are instruments payable to bearer, which are governed by the special laws of their issue, and by the decrees which may be issued thereon by the executive power for a better understanding and application of the said law, and therefore, as prescribed by the article we annotate, the provisions of section second, title 12, book 2, of this code, are not applicable to the questions which may arise with relation thereto. (Opinion of June 23, 1892. *Gaceta* of August 27.)

The bonds of the public debt must be considered as included in the provisions of

[1] Although it is not stated in the corresponding amendment for the islands of Cuba and Porto Rico, a similar modification as made for the Philippines should be understood as made for said islands.

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the article we annotate, because they are governed by special laws, decrees, or regulations, among which are included the law of March 30, 1861, and the order of the Government of the Republic of May 26, 1873, which prevent the State from placing any obstacle whatsoever to the free circulation of instruments without violating the obligation contracted with the holder, and therefore the retention and transmission of bonds of the perpetual debt at 4 per cent interior or exterior to a court by virtue of a request from the same is not proper, by reason of their being considered as evidence of a robbery. (Royal order of March 4, 1893. *Gaceta* of April 5.)

ART. 566. (Cuba and Porto Rico.) (See the note to the text of this article for the Peninsula.)

ART. 566. (Philippines.) The foregoing provisions shall not be applicable to the bank notes of the *Spanish Philippine Bank* (Banco Español Filipino), nor to notes of the same kind issued by institutions subject to the same rule, nor to the instruments payable to bearer issued by the State, which are governed by special laws, decrees, or regulations.

TITLE XIII.

LETTERS OF CREDIT.

ART. 567. Letters of credit are those issued by one merchant to another, or for the purpose of attending to a commercial transaction.

ART. 568. The essential conditions of letters of credit shall be—

1. To be issued in favor of a determined person and not to order.

2. To be limited to a fixed and specified amount or to one or more indeterminate amounts, but all included in a maximum sum the limit of which must be exactly stated.

Letters of credit which do not have one of these conditions shall be considered simply as letters of recommendation.

ART. 569. Who issues a letter of credit shall be liable to the person on whom it was issued for the amount paid by virtue of the same within the maximum fixed therein.

Letters of credit can not be protested, even when not paid, nor can the holder thereof acquire any right of action for said nonpayment against the person who issued it.

The payor shall have a right to demand the proof of the identity of the person in whose favor the letter of credit was issued.

ART. 570. The donor of a letter of credit may annul it, informing the bearer and the person to whom it is addressed of said revocation.

ART. 571. The holder of a letter of credit shall pay the donor the amount thereof without delay.

Should he not do so an action including attachment may be brought to recover said amount with the legal interest and the current exchange in the place where the payment was made on the place where it was repaid.

ART. 572. If the holder of the letter of credit does not make use thereof in the period agreed upon with the donor of the same, or in the absence of a fixed period, within six months from its date, in any place

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in Europe and within twelve months outside thereof, it shall be void in fact and in law.[1]

ART. 572. (Cuba and Porto Rico.) See the note to this article for the Peninsula.

ART. 572. (Philippines.) If the holder of a letter of credit does not make use thereof within the period agreed upon with the donor of the same, or, in the absence of a fixed period, within six months from its date in any point of the *Philippine Islands*, and within twelve months outside thereof, it shall be void in fact and in law.

[1] No amendment or explanation has been made in the modification of this article for Cuba and Porto Rico, and we are of the opinion that an amendment similar to that for the Philippines must be considered as made.

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BOOK THIRD.—MARITIME COMMERCE.

TITLE FIRST.

VESSELS.[1]

ART. 573. Merchant vessels constitute property which may be acquired and transferred by any of the means recognized by law. The acquisition of a vessel must be included in a written instrument, which shall not produce any effect with regard to third persons if not recorded in the commercial registry.

The ownership of a vessel shall also be acquired by the possession thereof in good faith for three years, with a good title duly recorded.

In the absence of any of these requisites, uninterrupted possession for ten years shall be necessary in order to acquire ownership.

A captain can not acquire the ship he is in command of by reason of prescription.

A freight vessel shall be considered as such when the number of passengers is smaller than the crew. (Royal order of June 26, 1890.)

With regard to the reference made as to the manner of proving the acquisition of a vessel, there must be taken into consideration, besides the provisions contained in this article, the provisions of articles 6 to 11 of the royal decree of November 7, 1876, according to which it is the duty of notaries public to execute the instruments referring to vessels at all points where the *Escribanias de Marina*, abolished by this decree, are vacant.

See articles 22 and 578 of this code.

ART. 574. The builders of vessels may employ the material and follow with regard to their construction and rigging the system which is most convenient to their interests. Ship agents and seamen shall subject themselves to the provisions of the laws of the public administration on navigation, customs, health, safety of the vessels, and other similar provisions.

ART. 575. Part owners of vessels shall enjoy the right of option of purchase and withdrawal in sales made to other persons; but they can only exercise it within the nine days following the record of the sale in the registry and paying cash.

See the provisions of article 592.

ART. 576. There shall always be understood as included in the sale of a vessel its rigging, tackle, stores, and engine, if it is a steamer, belonging thereto, and which are at the time in the possession of the vendor.

[1] See articles 45 to 56 of the regulations for the organization and government of the commercial registry of December 21, 1885.

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There shall not be considered as included in the sale the arms, munitions of war, provisions, nor fuel.

The vendor shall be under the obligation to deliver to the purchaser a certificate of the record of the vessel in the registry up to the date of the sale.

ART. 577. If the alienation of the vessel should take place while said vessel is on a voyage, the purchaser shall receive all the freights it earns from the time it received its last cargo, and the payment of the crew and other persons which go to make up its complement shall be paid by the same for said voyage.

If the sale takes place after the arrival of the vessel at the port of its destination, the freights shall belong to the vendor and he shall pay the crew and other persons which go to make up its complement, unless there is an agreement to the contrary in either case.

ART. 578. If, the steamer being on a voyage or in a foreign port, her owner or owners should voluntarily alienate her, either to Spaniards or to foreigners domiciled in the capital or in a port of another country, the bill of sale shall be executed before the consul of Spain of the port where she terminates her voyage, and said instrument shall have no effect with regard to third persons if it is not entered in the registry of the consulate. The consul shall immediately forward a true copy of the bill of sale of the vessel to the commercial registry of the port where said vessel is entered and registered.

In every case the alienation of the vessel must be stated, indicating whether the vendor receives the full price or part thereof, or whether he retains any credit in said vessel in full or in part. In case the sale is made to a Spaniard, this fact shall be stated in the certificate of navigation.

When, the ship being on a voyage, it should be rendered useless for navigation, the captain shall apply to the judge or court of competent jurisdiction of the port of arrival, should it be Spanish; and should it be a foreign port, to the consul of Spain, should there be one, or to the judge, or court, or local authority in the absence of the former; and the consul, or the judge, or court, or in their absence, the local authority, shall order an examination of the vessel to be made.

If the consignee or the underwriter should reside at said port, or should have representatives there, they must be cited in order to take part in the proceedings for the account of whom it may concern.

The provisions of the third paragraph of this article are in accordance and a complement to rule 6 of article 2161 of the law of civil procedure for the Peninsula, 2122 of that for Cuba and Porto Rico, and 2082 of that for the Philippines.

ART. 579. After the damage to the vessel has been proven as well as the impossibility of her being repaired to continue the voyage, her sale at public auction shall be ordered, subject to the following rules:

1. The hull of the vessel, her rigging, engines, stores, and other articles shall be appraised after an inventory, said proceedings being

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brought to the notice of the persons who may wish to take part in the auction.

2. The order or decree ordering the auction to be held shall be posted in the usual places, and shall be advertised in the newspapers of the port where said auction is to be held, should there be any, and in the other newspapers determined by the court.

The period which may be fixed for the auction shall not be less than twenty days.

3. These advertisements shall be repeated every ten days, and their insertion shall be stated in the proceedings.

4. The auction shall be held on the day fixed, with the formalities prescribed in the common law for judicial sales.

5. If the sale should take place when the vessel is in a foreign country, the special provisions governing such cases shall be observed.

With regard to the procedure, see rules 6 and 7 of article 2161, of the law of civil procedure for the Peninsula, 2122 of the same amended for Cuba and Porto Rico, and 2082 of that for the Philippines.

ART. 579. (Philippines.) After the damage to the vessel has been proven as well as the impossibility of her being repaired to continue the voyage, her sale at public auction shall be ordered, subject to the following rules:

1. The hull of the vessel, her rigging, engines, stores, and other articles shall be appraised after an inventory, said proceedings being brought to the notice of the persons who may wish to take part in the auction.

2. The order or decree ordering the auction to be held shall be posted in the usual places, and shall be advertised in the *Gaceta de Manila and in two of the newspapers of the port where said auction is to be held, having the largest circulation, should there be any.*

The period which may be fixed for the auction shall not be less than twenty days.

3. These advertisements shall be repeated every ten days and their insertion shall be stated in the proceedings.

4. The auction shall be held on the day fixed, with the formalities prescribed in the common law for judicial sales.

5. If the sale should take place while the vessel is in a foreign country, the special provisions governing such cases shall be observed.

ART. 580. In all judicial sales of vessels for the payment of creditors, the following shall have preference in the order stated:

1. The credits in favor of the public treasury which are accounted for by means of a judicial certificate of the competent authority.

2. The judicial costs of the proceedings, according to an appraisement approved by the judge or court.

3. The pilotage charges, tonnage dues, and the other sea or port charges, proven by means of proper certificates of the officers intrusted with the collection.

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4. The salaries of the caretakers and watchmen of the vessel and any other expense connected with the preservation of said vessel, from the time of arrival until her sale, which appear to have been paid or are due by virtue of a true account approved by the judge or court.

5. The rent of the warehouse where the rigging and stores of the vessel have been taken care of, according to contract.

6. The salaries due the captain and crew during their last voyage, which shall be vouched for by virtue of the liquidation made from the shipping articles and account books of the vessel, approved by the chief of the bureau of merchant marine where there is one, and in his absence by the consul, or judge, or court.

7. The reimbursement for the goods of the freight the captain may have sold in order to repair the vessel, provided the sale has been ordered by a judicial instrument executed with the formalities required in such cases, and recorded in the certificate of the registry of the vessel.

8. The part of the price which has not been paid the last vendor, the credits pending for the payment of material and work in the construction of the vessel, when it has not navigated, and those arising from the repair and equipment of the vessel and its provisioning with victuals and fuel during its last voyage.

In order that said credits may enjoy the preference contained in this number, they must appear by contracts recorded in the commercial registry, or if they were contracted for the vessel while on a voyage and said vessel has not returned to the port where she is registered, they must be proven with the authority required for such cases and entered in the certificate of the record of said vessel.

9. The amounts borrowed on bottomry bonds before the departure of the vessel, proven by means of the contracts executed according to law and recorded in the commercial registry, the amounts borrowed during the voyage with the authority mentioned in the foregoing number, filling the same requisites, and the insurance premium, proven by the policy of the contract or certificate taken from the books of the broker.

10. The indemnity due the shippers for the value of the goods shipped, which were not delivered to the consignees, or for averages suffered for which the vessel is liable, provided either appear in a judicial or arbitration decision.

See articles 52 et seq. of the commercial registry regulations, and articles 603, 667, 704, 730, 809, No. 4, and 811 No. 10, of this code.

The credits referred to in Nos. 7 and 10 of this article shall have preference over the marine mortgage, without requiring to be recorded in the commercial registry. (Article 31 of the marine mortgage law.)

ART. 581. If the proceeds of the sale are not sufficient to pay all the creditors included in one number or grade, the amount shall be divided among them pro rata.

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ART. 582. After the bill of the judicial sale at auction has been executed and recorded in the commercial registry, all the other liabilities of the vessel in favor of the creditors shall be considered canceled.

But if the sale should have been voluntary, and took place while the vessel was on a voyage, the creditors shall retain their rights against the vessel until her return to the port of her registry, and three months after the record of sale in the commercial registry, or after her arrival.

With regard to the record, see articles 54 et seq. of the organic regulations for the commercial registry.

ART. 583. If the ship being on a voyage the captain should find it necessary to contract one or more of the obligations mentioned in Nos. 8 and 9 of article 580, he shall apply to the judge or court[1] if he is in Spanish territory, and otherwise to the consul of Spain, should there be one, and in his absence to the judge or court or to the proper local authority, presenting the certificate of the registry of the vessel treated of in article 612, and the instruments proving the obligation contracted.

The judge or court, the consul or the local authority in a proper case, in view of the result of the proceedings instituted, shall make a temporary memorandum in the certificate of their result, in order that it may be recorded in the registry when the vessel returns to the port of its registry, or so that it can be admitted as a legal and preferred obligation in case of sale before the return, by reason of the sale of the vessel by virtue of a declaration of unfitness to navigate.

The lack of this formality shall make the captain personally liable for the credits which may be injured by his fault.

See articles 50 et seq. of the commercial registry regulations of December 21, 1885, and the notes to articles 610 and 611 of this code.

ART. 584. The vessels subject to the liability for the credits mentioned in article 580 may be attached and judicially sold in the manner prescribed in article 579, in the port in which they are, at the instance of any of the creditors; but if they should be freighted and ready to sail the attachment can not take place except for debts contracted by reason of the preparation and provisioning of the vessel for said voyage, and even then the attachment shall cease if any person interested in her sailing should give bond for the return of the vessel within the period fixed in the certificate of navigation, and if it should not return within said period, even were the delay caused by force majeure, the person giving the bond is bound to pay the debt in so far as it may be legal.

For debts of any other kind whatsoever not included in the said article 580, the vessel can only be attached in the port of her registry.

See articles 589, 690, No. 4, and article 755, No. 11, of this code.

[1] *Civil court* says the article amended for the Philippines.

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ART. 585. For all purposes of law not modified or restricted by this code, vessels shall be considered as personal property.

According to the provisions of the first article of the marine mortgage law of August 21, 1893, merchant vessels may be the subject of mortgage, in accordance with the provisions thereof.

For this purpose only such vessels shall be considered real estate, the article we annotate being considered as amended to this effect.

TITLE II.

PERSONS WHO TAKE PART IN MARITIME COMMERCE.

SECTION FIRST.

Owners of vessels and ship agents.

ART. 586. The owner of a vessel and the agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested therein.

By agent is understood the person intrusted with the provisioning of a vessel, or who represents her in the port in which she happens to be.

ART. 587. The agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight he may have earned during the trip.

The article we annotate is related to article 590 of this code.

ART. 588. Neither the owner of the vessel nor the agent shall be liable for the obligations contracted by the captain if the latter exceeds his powers and privileges which are his by reason of his position or should be granted him by the former.

However, if the amounts claimed were made use of for the benefit of the vessel, the owner or agent shall be liable.

ART. 589. If two or more persons should be part owners of a merchant vessel, an association shall be presumed as established by the part owners.

This association shall be governed by the resolutions of a majority of the members.

A majority shall be the relative majority of the voting members.

If there should be only two part owners, in case of disagreement the vote of the member having the largest interest shall be decisive. If the interests are equal, it shall be decided by lot.

The representation of the smallest part in the ownership shall have one vote; and in proportion the other part owners as many votes as they have parts equal to the smallest one.

A vessel can not be detained for the private debts of a part owner, nor can she be attached, nor an execution made upon her in entirety, but

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the proceedings shall be limited to the interest the debtor may have in the vessel, without interfering with her navigation.

When the ownership of a vessel is vested in two or more persons, in order to create a mortgage on the same, it shall be necessary that a resolution be adopted by all the part owners or by a majority thereof, said majority to be computed in the manner fixed in the article we annotate. (Article 3 of the marine mortgage law.)

See the note to article 594 of this code.

ART. 590. The part owners of a vessel shall be civilly liable, in the proportion of their contribution to the common fund, for the results of the acts of the captain, referred to in article 587.

Each part owner may exempt himself from this liability by the abandonment before a notary[1] of the part of the vessel belonging to him.

See article 619 of the code.

ART. 590. (Philippines.) (See the note to this article for the Peninsula.)

ART. 591. All the part owners shall be liable, in proportion to their respective ownership, for the expenses of repairs to the vessel, and for other expenses which are incurred by virtue of a resolution of the majority.

They shall likewise be liable in the same proportion for the expenses of maintenance, equipment, and provisioning of the vessel, necessary for navigation.

ART. 592. The resolutions of the majority with regard to the repair, equipment, and provisioning of the vessel in the port of departure shall bind the minority unless the partners in the minority renounce their participation therein, which must be acquired by the other part owners after a judicial appraisement of the value of the portion or portions ceded.

The resolutions of the majority relating to the dissolution of the association and sale of the vessel shall also be binding on the minority.

The sale of the vessel must take place at a public auction, subject to the provisions of the law of civil procedure, unless the part owners unanimously agree otherwise, the right of option to purchase and to withdraw mentioned in article 575 being always reserved.

The part of the law of civil procedure which treats of voluntary judicial auctions referred to in the last paragraph of the article we annotate, are articles 2048 to 2055 of the law in force in the Peninsula, articles 2047 to 2054 of that for Cuba and Porto Rico, as well as articles 747 to 761 of the first, and 746 to 760 of the second, and 2018 and 2019 of that for the Philippines.

ART. 593. The owners of a vessel shall have preference in her charter to other persons, offering equal conditions and price. If two or more of the former should claim said right the one having the greater interest shall be preferred, and should they have an equal interest it shall be decided by lot.

ART. 594. The part owners shall elect the manager who is to represent them in the capacity of agent.

[1] In the article amended for the Philippines, instead of *notary* the words *public clerk* are used.

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The appointment of director or agent may be revoked at the will of the members.

The director or agent appointed in accordance with the provisions of the article we annotate may create a mortgage when specially authorized thereto by the coowners in the manner prescribed in article 589 of this code. (Article 5 of the marine mortgage law.)

ART. 595. The agent, be he at the same time an owner of a vessel or a manager for an owner or for an association of coowners, must be qualified to trade and must be recorded in the merchants' registry of the province.

The agent shall represent the ownership of the vessel, and may in his own name and in such capacity take judicial and extrajudicial steps in all that relates to commerce.

ART. 596. The agent may discharge the duties of captain of the vessel, subject, in every case, to the provisions contained in article 609.

If two or more coowners request the position of captain, the disagreement shall be decided by a vote of the members; and if the vote should result in a tie, the position shall be given to the part owner having the larger interest in the vessel.

If the interest of the petitioners should be the same, and there should be a tie, the matter shall be decided by lot.

ART. 597. The agent shall select and come to an agreement with the captain, and shall act in the name of the owners, shall be bound in all that refers to repairs, details of equipment, armament, provisions, fuel, and freight of the vessel, and, in general, in all that relates to the requirements of navigation.

ART. 598. The agent can not order a new voyage, nor make contracts for a new charter, nor insure the vessel, without the authority of her owner or by virtue of a resolution of the majority of the coowners, unless these privileges were granted him in the certificate of his appointment.

If he should insure the vessel without authority therefor he shall be personally liable for the solvency of the underwriter.

ART. 599. The agent, manager of an association, shall give his coowners an account of the results of each voyage of the vessel, without prejudice to always having the books and correspondence relating to the vessel and to its voyages at the disposal of the same.

ART. 600. After the account of the managing agent has been approved by a relative majority, the coowners shall satisfy the expenses in proportion to their interest, without prejudice to the civil or criminal actions which the minority may deem fit to institute afterwards.

In order to enforce the payment, the managing agents shall have a right of action including attachment, which shall be instituted by virtue of a resolution of the majority, and without further proceedings than the acknowledgement of the signatures of the persons who voted the resolution.

ART. 601. Should there be any profits, the coowners may demand of the managing agent the amount due them, by means of an action includ-

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ing attachment, without further requisites than the acknowledgment of the signatures of the instrument approving the account.

ART. 602. The agent shall indemnify the captain for all the expenses he may have incurred from his own funds or from those of other persons, for the benefit of the vessel.

ART. 603. Before a vessel goes out to sea the agent shall have a right to discharge the captain and members of the crew whose contract did not state a definite period nor a definite voyage, paying them the salaries earned according to their contracts, and without any indemnity whatsoever, unless there is a special and specific agreement thereto.

ART. 604. If the captain or any other member of the crew should be discharged during the voyage, they shall receive their salary until the return to the place where the contract was made, unless there were good reasons for the discharge, all in accordance with articles 636 et seq. of this code.

ART. 605. If the contracts of the captain and members of the crew with the agent should not be for a definite period or voyage, they can not be discharged until the fulfillment of their contracts, except for reasons of insubordination in serious matters, robbery, theft, habitual drunkenness, and damage caused to the vessel or to its cargo by malice or manifest or proven negligence.

Article 637 of this code is related to the foregoing one.

ART. 606. If the captain should be a part owner in the vessel, he can not be discharged without the agent returning him the amount of his interest therein, which, in the absence of an agreement between the parties, shall be appraised by experts appointed in the manner established in the law of civil procedure.

See article 2117 of the law of civil procedure in force in the Peninsula, together with article 616 of the same, and articles 2078 and 615, respectively, of the same law amended for the islands of Cuba and Porto Rico.

ART. 607. If the captain and part owner should have obtained the command of the vessel by virtue of a special agreement contained in the articles of copartnership, he can not be deprived thereof except for the reasons mentioned in article 605.

ART. 608. In case of the voluntary sale of the vessel, all contracts between the agent and captain shall lapse, the latter reserving his right to the proper indemnity, according to the agreements celebrated with the agent.

The vessel sold shall remain subject to the security of the payment of said indemnity if, after the action against the vendor has been instituted, the latter should be insolvent.

SECTION SECOND.

Captains and masters of vessels.

ART. 609. Captains and masters of vessels must be Spaniards having legal capacity to bind themselves in accordance with this code, and must prove that they have the skill, capacity, and conditions

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required to command and direct the vessel, as established by marine laws, ordinances, or regulations, or by those of navigation, and that they are not disqualified according to the same for the discharge of said position.

If the owner of a vessel desires to be the captain thereof and does not have the legal qualifications therefor, he shall limit himself to the financial administration of the vessel, and shall intrust her navigation to the person having the qualifications required by said ordinances and regulations.

ART. 610. The following powers are inherent in the position of captain or master of a vessel:

1. To appoint or make contracts with the crew in the absence of the agent and propose said crew, should said agent be present; but the agent shall not be permitted to employ any member against the captain's express refusal.

2. To command the crew and direct the vessel to the port of its destination, in accordance with the instructions he may have received from the agent.

3. To impose, in accordance with the shipping articles and to the laws and regulations of the merchant marine, on board the vessel, correctional penalties upon those who do not comply with his orders or who conduct themselves against discipline, holding a preliminary hearing on the crimes committed on board the vessel on the high seas, which shall be turned over to the authorities, who are to take cognizance thereof, at the first port touched.

4. To make contracts for the charter of the vessel in the absence of the agent or of her consignee, acting in accordance with the instructions received and protecting the interests of the owner most carefully.

5. To adopt all the measures which may be necessary to keep the vessel well supplied and equipped, purchasing for the purpose all that may be necessary, provided there is no time to request instructions of the agent.

6. To make, in similar urgent cases and on a voyage, the repairs to the hull and engines of the vessel and to her rigging and equipment which are absolutely necessary in order for her to be able to continue and conclude her voyage; but if she should arrive at a point where there is a consignee of the vessel, he shall act in concurrence with the latter.

Loans contracted by the captain during his last voyage for the purpose of repairing the vessel shall have preference over the vessel mortgage if they embrace the following circumstances:

1. That the repairs to the vessel were made under the circumstances mentioned in rule 6 of the article we annotate, and with the resolution established in the said rule.

2. That in making the repairs and contracting the loans required therefor the provisions of article 583 of this code were observed.

3. That the temporary memorandum required in the said article 583 was made.

The temporary memorandum shall have all its effects with regard to the preference during the time the vessel does not return to the port of departure, all the provisions contained in article 33 of the marine mortgage law in its third and fourth paragraphs being applicable.

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ART. 611. In order to comply with the obligations mentioned in the foregoing article, the captain, when he has no funds and does not expect to receive any from the agent, shall procure the same in the successive order stated below:

1. By requesting said funds of the consignees or correspondents of the vessel.

2. By applying to the consignees of the cargo or to the persons interested therein.

3. By drawing on the agent.

4. By borrowing the amount required by means of a bottomry bond.

5. By selling a sufficient amount of the cargo to cover the amount absolutely necessary to repair the vessel, and to equip her to pursue the voyage.

In the two latter cases he must apply to the judicial authority of the port, if in Spain, and to the Spanish consul, if in a foreign country; and where there should be none, to the local authority, proceeding in accordance with the prescriptions of article 583, and with the provisions of the law of civil procedure.

When the bottomry bond has been made in the case established in this article, and with the formalities mentioned in article 583, it shall have preference to the marine mortgage.

The provisional memorandum which, in accordance with the last two articles cited, is to be made by the judge or court, or by the consul or local authority, in the certificate of the registry of the vessel, which the captain must have on board the vessel, in accordance with article 612, it shall have all its effects with regard to the preference until the vessel returns to the port of departure.

As soon as this occurs, the owner of the vessel or the captain must present the certificate record, in order that the loan may be recorded in the commercial registry within the period of forty-eight hours after the vessel has been entered.

If the port of arrival does not belong to the commercial registry in which the vessel is recorded, it shall be presented within the said period of forty-eight hours to the judge or local or marine official, who shall record the presentation of the document and order letters rogatory to be issued on the place of the registry of the vessel.

When the presentation has been made within this period, the record shall have the effect of preserving the preference established in the foregoing article; for all the other effects which the law grants by virtue of the record, there shall be considered as its date that on which the certificate of ownership of the vessel was provisionally recorded. If presented after the said period, it shall have its effect, but only from the date of its entry in the commercial registry.

Without prejudice to the obligations which this article imposes on the owner and captain, the lenders, or the persons whom the former have requested to secure the loan, may demand that the said loan be recorded in the registry.

The provisions contained in the last paragraph of the article we annotate, in alluding to the law of civil procedure, refer to rule 9, of article 2161 of that for the Peninsula, 2122 of that amended for Cuba and Porto Rico, and 2082 of that for the Philippines.

See furthermore articles 50 et seq. of the commercial registry regulations.

ART. 612. The following obligations are inherent in the office of captain:

1. To have on board before starting on a voyage a detailed inventory of the hull, engines, rigging, tackle, and other equipments of the vessel;

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the royal or the navigation certificate; the roll of the persons who make up the crew of the vessel, and the shipping articles; the list of passengers; the health certificate; the certificate of the registry proving the ownership of the vessel, and all the obligations which encumber the same up to that date; the charters or authenticated copies thereof; the invoices or manifest of the cargo, and the instrument of the expert visit or inspection, should it have been made at the port of departure.

2. To have a copy of this code on board.

3. To have three folioed and stamped books, placing at the beginning of each one a note of the number of folios it contains, signed by the marine official, and in his absence by the competent authority.

In the first book, which shall be called "log book," he shall enter every day the condition of the atmosphere, the reigning winds, the course sailed, the rigging carried, the force of the engines of navigation, the distance covered, the maneuvers executed, and other incidents of navigation. He shall also enter the damage suffered by the vessel in her hull, engines, rigging, and tackle, no matter what is its cause, as well as the imperfections and averages of the cargo, and the effects and importance of the jetsam, should there be any; and in cases of grave resolutions which require the advice or a meeting of the officers of the vessel, or even of the passengers and crew, he shall record the decision adopted. For the notices indicated he shall make use of the binnacle book, and of the steam or engine book kept by the engineer.

In the second book, called the "accounting book," he shall enter all the amounts collected and paid for the account of the vessel, entering specifically article by article, the reason for the collection, and the amounts invested in provisions, repairs, acquisition of rigging or goods, fuel, outfits, wages, and other expenses. He shall furthermore enter therein a list of all the members of the crew, stating their domiciles, their wages and salaries, and the amounts they may have received on account, directly or by delivery to their families.

In the third book, called "freight book," he shall record the entry and exit of all the goods, stating their marks and packages, names of the shippers and of the consignees, ports of loading and unloading, and the freight earned. In the same books he shall record the names and places of sailing of the passengers and the number of packages of which their baggage consists, and the price of the passage.

4. To make, before receiving the freight, with the officers of the crew, and with two experts, if required by the shippers and passengers, an examination of the vessel, in order to ascertain whether she is watertight, and whether the rigging and engines are in good condition; and if she has the equipment required for good navigation, preserving a certificate of the memorandum of this inspection, signed by all the persons who may have taken part therein, under their liability.

The experts shall be appointed one by the captain of the vessel and the other one by the person who requests the examination, and in case

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of disagreement a third shall be appointed by the marine authority of the port.[1]

5. To remain constantly on board the vessel with the crew during the time the freight is taken on board and carefully watch the stowage thereof; not to consent to any merchandise or goods of a dangerous character to be taken on, such as inflammable or explosive substances, without the precautions which are recommended for their packing, management and isolation; not to permit that any freight be carried on deck which by reason of its disposition, volume, or weight makes the work of the sailors difficult, and which might endanger the safety of the vessel; and if, on account of the nature of the merchandise, the special character of the shipment, and principally the favorable season it takes place, he allows merchandise to be carried on deck, he must hear the opinion of the officers of the vessel, and have the consent of the shippers and of the agent.

6. Demand a pilot at the expense of the vessel whenever required by navigation, and principally when a port, canal, or river, or a roadstead or anchoring place is to be entered with which neither the officers nor the crew are acquainted.

7. To be on deck at the time of sighting land and to take command on entering and leaving ports, canals, roadsteads, and rivers, unless there is a pilot on board discharging his duties. He shall not spend the night away from the vessel except for serious causes or by reason of official business.

8. To present himself, when making a port under stress, to the maritime authority if in Spain[2] and to the Spanish consul if in a foreign country, before twenty-four hours have elapsed, and make a statement of the name, registry, and port of departure of the vessel, of its cargo, and reason of arrival, which declaration shall be viséd by the authority or by the consul if after examining the same it is found to be acceptable, giving the captain the proper certificate in order to show his arrival under stress and the reasons therefor. In the absence of marine officials or of the consul, the declaration must be made before the local authority.

9. To take the steps necessary before the competent authority in order to enter in the certificate of the Commercial Registry of the vessel the obligations which he may contract in accordance with article 583.

10. To put in a safe place and keep all the papers and belongings of any member of the crew who might die on the vessel, drawing up a detailed inventory, in the presence of passengers as witnesses, and, in their absence, of members of the crew.

11. To conduct themselves according to the rules and precepts contained in the instructions of the agent, being liable for all that they may do in violation thereof.

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[1] The same article amended for the Philippines adds: *or the person discharging his duties.*

[2] The same article amended for the Philippines contains the word *Philippines* instead of *Spain.*

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12. To give an account to the agent from the port where the vessel arrives, of the reason therefor, taking advantage of the semaphore, telegraph, mail, etc., according to the cases; notify him of the freight he may have received, stating the name and domicile of the shippers, freight earned, and amounts borrowed on bottomry bond, advise him of his departure, and give him any information and data which may be of interest.

13. To observe the rules on the situation of lights and evolutions to prevent collisions.

14. To remain on board, in case of danger to the vessel, until all hope to save her is lost, and before abandoning her to hear the officers of the crew, abiding by the decision of the majority; and if the boats are to be taken to, he shall take with him, before anything else, the books and papers, and then the articles of most value, being obliged to prove in case of the loss of the books and papers that he did all he could to save them.

15. In case of wreck he shall make the proper protest in due form at the first port reached, before the competent authority or Spanish consul, within twenty-four hours, stating therein all the incidents of the wreck, in accordance with case 8 of this article.

16. To comply with the obligations imposed by the laws and rules of navigation, customs, health, and others.

ART. 612. (Philippines.) (The changes are contained in the preceding footnotes.)

With regard to the certificate of the registry referred to in number 1, which is indispensable for the vessel to put to sea, see articles 50 et seq. of the commercial registry regulations.

According to article 14 of the marine-mortgage law, in order that the effects of the said certificate may be enforced, it must be recorded in the commercial registry of the province in which the vessel in question is registered, or in that of the place of the construction of the same, when vessels which are not registered are in question.

The register must also enter the certificate of the registry showing the ownership of the vessel, and which the captain must have on board the vessel, in accordance with the provisions of the article we annotate, there being sufficient reason to refuse to make the record if said document is not presented. Only in case the owner of the vessel states that she is on a voyage may the said entry be omitted, which, however, must be made as soon as the vessel returns from the said voyage.

There shall be precisely stated in the record made in the commercial registry of a mortgage whether the entry referred to in the foregoing paragraph of this article was made, or whether, on the contrary, it was omitted, and for what reason.

* * * * * * *

If the instrument creating a marine mortgage should be executed abroad, in order that it may have its legal effects, this must be done before the Spanish consul of the port where it takes place, and it must furthermore be recorded in the registry of the consulate, and shall be entered on the certificate of ownership which the captain must have, in accordance with article 612 of the code of commerce.

The Spanish consul shall forward at once a true copy of the instrument to the commercial registry where the vessel is registered. The register, upon receiving it, shall make the entry in the registry.

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Other contracts made abroad must be executed with the same formalities, if they are to have preference over the marine-mortgage loan by virtue of their record in the commercial registry. (Article 17 of the marine-mortgage law cited.)

The competent authorities referred to in the first paragraph of the third obligation of this article are, in our opinion, the municipal judges in the Peninsula and in the Antilles, and the justices of the peace in the Philippines.

They must keep, besides these books, the proper documents, according to the kind of navigation in which the vessels are engaged.

See articles 43 and 44 of the regulations for the navigation of the merchant marine.

With regard to the pilotage, treated of in rule 6 of this article, see the provisions of the royal order of March 11, 1886.

See with regard to the provisions of rule 8 of this article, articles 2131 et seq. of the law of civil procedure for the Peninsula, 2092 et seq. of that for Cuba and Porto Rico, and article 2052 of that for the Philippines.

As an addition to the provisions contained in number 9, and with regard to the prescriptions contained in rule 8 of this article, see articles 50 et seq. of the commercial registry regulations.

The rules prescribed in number 13 of this article constitute those contained in the international regulations for lights and for the entering of ports, which have been accepted by Germany, Austria, Belgium, Brazil, Chile, Denmark, Ecuador, Spain, the United States, France, Great Britain, Greece, Hawaii, Italy, Japan, Norway, the Netherlands, Portugal, Russia, Sweden, and Turkey.

The formalities to be filled in making the declaration and the proceedings to be observed, according to No. 1 of the article we annotate, are contained in articles 2131 to 2146 of the law of civil procedure for the Peninsula, 2092 to 2107 of that amended for the island of Cuba and Porto Rico, and 2052 to 2067 of that for the Philippines.

The laws and regulations referred to in the last paragraph are, among others, those of the merchant navigation and the customs regulations, in so far as they refer to captains and their manifests.

ART. 613. If a captain navigates for freight in common or on shares he can not make any transaction for his exclusive account, and should he do so the profit shall belong to the other persons in interest, and the losses shall be his.

ART. 614. A captain who, having made an agreement to make a voyage, should not fulfill his obligation, without being prevented by an accidental case or by force majeure, shall pay for all the losses his action may cause, without prejudice to the criminal penalties which may be proper.

ART. 615. Without the consent of the agent, the captain can not have himself substituted by another person; and should he do so, besides being liable for all the acts of the substitute and bound to the indemnities mentioned in the foregoing article, the substitute as well as the captain may be discharged by the agent.

ART. 616. If the provisions and fuel of the vessel are consumed before arriving at the port of destination, the captain shall decide, with the consent of the officers of the same, to make the nearest port to get a supply of either; but if there are persons on board who have provisions of their own he may force them to turn said provisions over for the common consumption of all persons on board, paying the price thereof immediately, or, at the latest, at the first port reached.

This article is related to article 702 of this code.

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ART. 617. The captain can not contract loans on respondentia, and should he do so the contract shall be void.

Neither can he borrow money on bottomry for his own transactions, except on the portion of the vessel he owns, provided no money has been borrowed on the whole vessel, and provided there does not exist any other kind of lien or obligation thereon. When he is permitted to do so, he must state what interest he has in the vessel.

In case of violation of this article the principal, interest, and costs shall be charged to the private account of the captain, and the agent shall furthermore have the right to discharge him.

ART. 618. The captain shall be civilly liable to the agent and the latter to the third persons who may have made contracts with the former—

1. For all the damages suffered by the vessel and its cargo by reason of want of skill or negligence on his part. If a misdemeanor or crime has been committed he shall be liable in accordance with the penal code.

2. For all the thefts committed by the crew, reserving his right of action against the guilty parties.

3. For the losses, fines, and confiscations imposed on account of violation of the laws and regulations of customs, police, health, and navigation.

4. For the loss and damage caused by mutinies on board the vessel, or by reason of faults committed by the crew in the service and defense of the same, if he does not prove that he made full use of his authority to prevent or avoid them.

5. For the loss and damages caused by an undue use of powers and nonfulfillment of the obligations which are his in accordance with articles 610 and 612.

6. For those arising by reason of his going out of his course or taking a course which he should not have taken without sufficient cause, in the opinion of the officers of the vessel, at a meeting with the shippers or supercargoes who may be on board.

No exception whatsoever shall exempt him from this obligation.

7. For those arising by reason of his voluntarily entering a port other than his destination, with the exception of the cases or without the formalities referred to in article 612.

8. For those arising by reason of the nonobservance of the provisions contained in the regulations for lights and evolutions for the purpose of preventing collisions.

ART. 619. The captain shall be liable for the cargo from the time it is turned over to him at the dock, or afloat alongside the ship, until he delivers it on the shore or on the discharging wharf, unless the contrary has been expressly agreed upon.

See article 625 of this code.

ART. 620. The captain shall not be liable for the damages caused to the vessel or to the cargo by reason of force majeure; but he shall

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always be so—no agreement to the contrary being valid—for those arising through his own fault.

Neither shall he be personally liable for the obligations he may have contracted for the repair, equipment, and provisioning of the vessel, which shall be incurred by the agent, unless the former has expressly bound himself personally or signed a draft or promissory note in his name.

ART. 621. A captain who borrows money on bottomry, or who pledges or sells merchandise or provisions in other cases and without the formalities prescribed in this code, shall be liable for the principal, interest, and costs, and shall indemnify for the damages he may cause.

The captain who commits fraud in his accounts shall reimburse the amount defrauded, and shall be subject to the provisions contained in the penal code.

ART. 622. If when on a voyage the captain should receive notice of the appearance of privateers or men of war against his flag, he shall be obliged to make the nearest neutral port, inform his agent or shippers, and await an occasion to sail in company or until the danger is over or to receive final orders from the agent or shippers.

ART. 623. If he should run the danger of being attacked by a privateer and after having done all that was possible to avoid the encounter and have resisted the delivery of the goods on the vessel or of its cargo, they should be forcibly taken away from him, or he should be obliged to deliver them, he shall make an entry in his freight book and shall swear to the act before the competent authority at the first port he touches.

After the force majeure has been proven, he shall be exempted from liability.

ART. 624. A captain whose vessel has gone through a hurricane or who believes that the cargo has suffered damages or averages, shall take an oath thereon before the competent authority at the first port he touches within the twenty-four hours following his arrival, and shall ratify it within the same period when he arrives at his destination, immediately proceeding with the proof of the facts, it not being permitted to open the hatches until this has been done.

The captain shall proceed in the same manner if, the vessel having been wrecked, he is saved alone or with part of his crew, in which case he shall appear before the nearest authority, and make a sworn statement of the facts.

The authority or the consul abroad shall verify the said facts, receiving a sworn statement of the members of the crew and passengers who may have been saved, and taking the other steps which may assist in arriving at the facts, drafting a certificate of the result of the proceedings in the log book and in that of the sailing master, and shall deliver the original proceedings to the captain, stamped and folioed, with a memorandum of the folios, which he must rubricate, for their presentation to the judge or court[1] of the port of destination.

[1] *Civil court*, according to the same article amended for the Philippines.

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The statement of the captain shall be accepted if it is in accordance with those of the crew and passengers; if they disagree, the latter shall be accepted, unless there is proof to the contrary.

See number 15 of article 612 and its note, in so far as it relates to the proceedings for recording the sworn statement.

ART. 625. The captain, under his personal liability, as soon as he arrives at the port of destination, obtains the necessary permission from the health and customs officers and fulfills the other formalities required by the regulations of the administration, shall turn over the cargo, without any defalcation, to the consignees, and, in a proper case, the vessel, rigging, and freights to the agent.

If, by reason of the absence of the consignee or on account of the nonappearance of a legal holder of the invoices, the captain does not know to whom he is to make the legal delivery of the cargo, he shall place it at the disposal of the proper judge or court or authority, in order that he may decide with regard to its deposit, preservation, and custody.

Article 2119 of the law of civil procedure for the Peninsula, 2080 of that for Cuba and Porto Rico, and 2040 of that for the Philippines are applicable to the proceedings to be observed with regard to the deposits referred to in the last paragraph of this article.

SECTION THIRD.

Officers and crews of vessels.

ART. 626. In order to be a sailing master it shall be necessary—

1. To have the conditions required by the marine or navigation laws or regulations.

2. To not be disqualified in accordance therewith for the discharge of the position.

See articles 7 et seq. of the regulations for the merchant-marine navigation. In articles 14 et seq. of said regulations the conditions necessary in order to admit applicants to examinations for the three classes into which sailing masters are divided, are prescribed. Nevertheless, these three classes have been reduced to two by the royal order of May 20, 1890, which calls them "captains of the merchant marine," which take the place of the old first and second sailing masters, and "sailing masters of the merchant marine," which are equivalent to the old third sailing masters. Furthermore said royal order prescribes the manner of issuing certificates to these two classes of sailing masters, the requisites necessary in order to attain the class of sailing masters of merchantmen, and for the latter to attain the grade of captains and the manner of proving the actual time of sea service.

ART. 627. The sailing master, as the second chief of the vessel and unless the agent orders otherwise, shall take the place of the captain in cases of absence, sickness, or death, and shall then assume all his powers, obligations, and liabilities.

ART. 628. The sailing master must be supplied with charts of the waters which are to be navigated, with the maps and quadrants or sextants which are in use and which are necessary for the discharge of his duties, being liable for the accidents which may arise by reason of his fault in this matter.

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ART. 629. The sailing master shall personally and specially keep a book folioed and stamped on all its pages, called the "binnacle book," with a memorandum at the beginning stating the number of folios it contains, signed by the competent authority, and shall enter therein daily the distance and course traveled, the variations of the needle, the leeway, the direction and force of the wind, the condition of the atmosphere and of the sea, the rigging set, the latitude and longitude observed, the number of furnaces fired, the steam pressure, the number of revolutions, and under the name of "incidents" the evolutions made, the meetings with other vessels, and all the particulars and accidents which may occur during the voyage.

ART. 630. In order to change the course and to take the one most convenient for a good voyage of the vessel, the sailing master shall come to an agreement with the captain. If the latter should object, the sailing master shall make the remarks he may consider necessary in the presence of the other officers of the vessel. If the captain should still insist in his objection, the sailing master shall make the proper protest, signed by him and by another one of the officers in the log book, and shall obey the captain, who shall be the only one liable for the consequences of his order.

ART. 631. The sailing master shall be liable for all the damages suffered by the vessel and cargo by reason of his negligence or want of skill, without prejudice to the criminal liability which may arise, if a crime or offense were committed.

ART. 632. It shall be the duty of the mate—

1. To care for the preservation of the hull and rigging of the vessel, and to take charge of the tackle and equipment which make up her outfit, suggesting to the captain the repairs necessary and the replacement of the goods and implements which are rendered useless and lost.

2. To take care that the cargo is well disposed of, keeping the vessel always ready for evolutions.

3. To preserve order, discipline, and good service among the crew, requesting the necessary orders and instructions of the captain, and quickly informing him of any occurrence in which the intervention of his authority may be necessary.

4. To assign to each sailor the work he is to do on board, in accordance with the instructions received, and see that it is exactly and carefully carried out.

5. To take charge by inventory of the rigging and all the equipments of the vessel, if it should be laid up, unless the agent has ordered otherwise.

With regard to engineers the following rules shall govern:

1. In order to be shipped as a marine engineer forming part of the complement of a merchant vessel it shall be necessary to possess the qualifications which the laws and regulations require, unless disqualified in accordance therewith to hold said position. Engineers shall be

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considered as officers of the vessel, but they shall exercise no command nor intervention except with relation to the motive power.

2. When there are two or more engineers on one vessel, one of them shall be the chief, and the other engineers and all the personnel of the engines shall be under his orders; he shall furthermore have the motive power under his charge, as well as the space, instruments, and implements belonging thereto, the fuel, the lubricating material and, finally, all which comes under the jurisdiction of an engineer on board a vessel.

3. He shall keep the engines and boilers in good condition and in a state of cleanliness, and shall order what may be proper in order that they may always be ready for regular use, being liable for the accidents or damages which may arise by reason of his want of skill or negligence to the motive apparatus, or to the vessel and cargo, without prejudice to the criminal liability which may be proper if a crime or offense is proven.

4. He shall make no change in the motive apparatus, nor shall he repair the injuries he may have noticed in the same, nor change the normal speed of its action without the prior authority of the captain, to whom, if he should object to their being made, he shall state the reasons he may deem proper in the presence of the other engineers or officers; and if, notwithstanding this, the captain should insist in his objection, the chief engineer shall make the proper protest, entering the same in the engine book, and shall obey the captain, who shall be the only one liable for the consequences of his order.

5. He shall inform the captain of any accident which mayoccur to the motive apparatus, and shall inform him when it may be necessary to stop the engines for some time, or when any other accident occurs in his department of which the captain should be immediately informed, frequently advising him furthermore of the consumption of fuel and lubricating material.

6. He shall keep a book or registry called the "Engine book," in which there shall be entered all the data that refer to the work of the engines, such as, for example, the number of furnaces fired, the steam pressure in the boilers and cylinders, the vacuum in the condenser, the temperatures, the degree of saturation of the water, the consumption of fuel and lubricating material, and under the heading of "Noteworthy occurrences" the accidents and derangements which occur in engines and boilers, the causes therefor, and the means employed to repair the same. There shall also be stated, taking the information from the binnacle book, the force and direction of the wind, the rigging set, and the speed of the vessel.

ART. 633. The mate shall take command of the vessel in case of the impossibility or disability of the captain and sailing master, assuming in such case his powers and liability.

According to article 26 of the merchant navigation regulations no vessel is obliged to carry a mate, it being optional with the captains and owners to take them or not, as they may deem proper.

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ART. 634. The captain may make up his crew with the number he may consider advisable, and in the absence of Spanish sailors he may ship foreigners residing in the country, the number thereof not to exceed one-fifth of the total crew. If in foreign ports the captain should not find a sufficient number of Spanish sailors, he may make up the crew with foreigners, with the consent of the consul or marine authorities.

The agreements which the captain may make with the members of the crew and others who go to make up the complement of the vessel, to which reference is made in article 612, must be reduced to writing in the accounting book without the intervention of a notary or clerk, signed by the parties thereto, and viséd by the marine authority if they are executed in Spanish territory, or by the consuls or consular agents of Spain if executed abroad, stating therein all the obligations which each one contracts and all the rights they acquire, said authorities taking care that these obligations and rights are recorded in a concise and clear manner, which will not give rise to doubts or claims.

The captain shall take care to read to them the articles of this code, which concern them, stating that they were read in the said document.

If the book includes the requisites prescribed in article 612, and there should not appear any signs of alterations in its clauses, it shall be admitted as evidence in questions which may arise between the captain and the crew with regard to the agreements contained therein and the amounts paid on account of the same.

Every member of the crew may request a copy of the captain, signed by the latter, of the agreement and of the liquidation of his wages, as they appear in the book.

See article 6 of the merchant navigation regulations.

With regard to the contract or agreement referred to in the second paragraph of this article, they repeal the provisions or the ordinances which prescribed the necessity of said contracts being executed by means of a public instrument before the marine officials.

ART. 635. A sailor who has contracted to serve on a vessel can not rescind his contract nor fail to comply therewith except by reason of a legitimate impediment which may have occurred.

Neither can he pass from the service of one vessel to another without obtaining the written consent of the captain of the vessel on which he may be.

If, without obtaining said permission, the sailor who has signed for one vessel should sign for another one, the second contract shall be void, and the captain may choose between forcing him to fulfill the service to which he first bound himself or look for a person to substitute him at his expense.

Said sailor shall furthermore lose the wages earned on his first contract to the benefit of the vessel for which he may have signed.

A captain who, knowing that a sailor is in the service of another vessel, should have made a new agreement with him, without having

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requested the permission referred to in the foregoing articles, shall be personally liable to the captain of the vessel to which the sailor first belonged for that part of the indemnity, referred to in the third paragraph of this article, which the sailor could not pay.

ART. 636. Should a fixed period for which a sailor has signed not be stated, he can not be discharged until the end of the return voyage to the port where he enrolled.

ART. 637. Neither can the captain discharge a sailor during the time of his contract except for sufficient cause, the following being considered as such:

1. The perpetration of a crime which disturbs order on the vessel.

2. Repeated offenses of insubordination against discipline or against the fulfillment of the service.

3. Repeated incapacity or negligence in the fulfillment of the service to be rendered.

4. Habitual drunkenness.

5. Any occurrence which incapacitates the sailor to carry out the work under his charge, with the exception of the provisions contained in article 644. 6. Desertion.

The captain may, however, before setting out on a voyage and without giving any reason whatsoever, refuse to permit a sailor he may have taken from going on board and may leave him on land, in which case he will be obliged to pay him his wages as if he had rendered services.

The indemnity shall be paid from the funds of the vessel if the captain should have acted for reasons of prudence and in the interest of the safety and good service of the former. Should this not be the case, it shall be paid by the captain personally.

After the vessel has sailed, and during the voyage and until the conclusion thereof, the captain can not abandon any member of his crew on land or on the sea, unless, by reason of being guilty of some crime, his imprisonment and delivery to the competent authority is proper in the first port touched, which will be obligatory on the captain.

ART. 638. If, the crew having been taken, the voyage is revoked by the will of the agent or of the charterers before or after the vessel has put to sea or if the vessel is in the same manner given a different destination than that fixed in the agreement with the crew, the latter shall be indemnified because of the rescission of the contract according to the case, viz:

1. If the revocation of the voyage should be decided before the departure of the vessel from the port, each sailor engaged shall be given one month's salary, besides what may be due him in accordance with his contract, for the services rendered to the vessel up to the date of the revocation.

2. If the agreement should have been for a fixed amount for the whole voyage, there shall be graduated what may be due for said month and

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days, calculating the same in proportion to the estimated duration of the voyage, in the judgment of experts, in the manner established in the law of civil procedure; and if the proposed voyage should be of such short duration that it is calculated at one month more or less, the indemnity shall be fixed for fifteen days, discounting in all cases the sums advanced.

3. If the revocation should take place after the vessel has put to sea, the sailors engaged for a fixed amount for the voyage shall receive the salary which may have been offered them in full as if the voyage had terminated, and those engaged by the month shall receive the amount corresponding to the time they might have been on service and the time required by the vessel to arrive at the port which was the conclusion of the voyage, the captain being obliged, furthermore, to pay said sailors the passage to the said port or to the port of sailing of the vessel, as may be convenient for them.

4. If the agent or the charterers of the vessel should give said vessel a destination other than that fixed in the agreement, and the members of the crew should not agree thereto, they shall be given by way of indemnity half the amount fixed in case No. 1, besides what may be owed them for the part of the monthly wages corresponding to the days which have elapsed from the date of their agreements.

If they accept the change, and the voyage, on account of the greater distance or for other reasons, should give rise to an increase of wages, the latter shall be privately regulated, or through amicable arbitrators in case of disagreement. Even though the voyage may be to a nearer point, this shall not give rise to a reduction in the wages agreed upon.

If the revocation or change of the voyage should be decided upon by the shippers or charterers, the agent shall have a right to demand of them the indemnity which is justly due.

The provisions of the law of civil procedure, referred to in No. 2 of this article, are those contained in article 2117, as well as those of article 616 of that for the Peninsula, 2078 and 615 of that amended for Cuba and Porto Rico, and articles 2038 and 589 of that for the Philippines.

ART. 639. If the revocation of the voyage should arise from a sufficient cause independent of the will of the agent or charterers, and the vessel should not have left the port, the members of the crew shall not be entitled to anything but the wages earned up to the day on which the revocation took place.

ART. 640. The following shall be sufficient reasons for the revocation of the voyage:

1. A declaration of war or interdiction of commerce with the power to whose territory the vessel was bound.

2. The blockade of the port of destination or the breaking out of an epidemic after the agreement.

3. The prohibition to receive in said port the goods which make up the cargo of the vessel.

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4. The detention or embargo of the same by order of the Government, or for any other reason independent of the will of the agent.

5. The inability of the vessel to navigate.

ART. 641. If, after a voyage has been begun, any of the first three causes mentioned in the foregoing article should occur, the sailors shall be paid at the port the captain may deem it advisable to make for the benefit of the vessel and cargo, according to the time they may have served thereon; but if the vessel is to continue the voyage, the captain and the crew may mutually demand the enforcement of the contract.

In case of the occurrence of the fourth cause, the crew shall continue to be paid half wages, if the agreement were for monthly wages; but if the detention should exceed three months, the engagement shall be rescinded and the crew shall be paid what they should have earned, according to the contract, if the voyage had been made, and if the agreement had been made for a fixed sum for the voyage, the contract must be complied with in the terms agreed upon.

In the fifth case, the crew shall only be entitled to recover the wages earned; but if the disability of the vessel should have been caused by the negligence or lack of skill of the captain, engineer, or sailing master, they shall indemnify the crew for the loss suffered, always reserving the criminal liability which may be proper.

ART. 642. If the crew has been engaged to work on shares they shall not be entitled, by reason of the revocation, delay, or greater extension of the voyage, to anything but the proportionate part of the indemnity paid into the common funds of the vessel by the persons liable for said occurrences.

ART. 643. If the vessel and her freight should be totally lost, by reason of capture or wreck, all rights of the crew to demand any wages whatsoever shall be extinguished, as well as that of the agent for the recovery of the advances made.

If a portion of the vessel or freight should be saved, or part of either, the crew engaged on wages, including the captain, shall retain their rights on the salvage, so far as they go, on the remainder of the vessel as well as the value of the freights of the cargo saved; but sailors who are engaged on shares shall not have any right whatsoever to the salvage of the hull, but only on the portion of the freight saved. If they should have worked to collect the remainder of the shipwrecked vessel, they shall be given a sum on the value of the articles saved, in proportion to the efforts made and to the risks run to do so.

ART. 644. A sailor who falls sick shall not lose his right to wages during the voyage, unless the sickness is the result of his own fault. At any rate, the costs of the attendance and cure shall be defrayed from the common funds, to be repaid.

If the sickness should be by reason of an injury received in the service or defense of the vessel the sailor shall be attended and cured from the common funds, there being deducted before anything else from the proceeds of the freight, the costs of the attendance and cure.

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ART. 645. If a sailor should die during the voyage his heir shall be given the wages earned and not received, according to his engagement and the reason for his death, namely:

If he should have died a natural death and should have been engaged on wages there shall be paid what may have been earned up to the date of his death.

If the engagement had been made for a fixed sum for the whole voyage there shall be paid half the amount earned if the sailor died on the voyage out, and the whole amount if he died on the return voyage.

And if the engagement had been made on shares and the death should have occurred after the voyage was begun, the heirs shall be paid the entire portion due the sailor, but should the latter have died before the departure of the vessel from the port, the heirs shall not be entitled to claim anything.

If the death should have occurred in the defense of the vessel, the sailor shall be considered as living, and his heirs shall be paid, at the end of the voyage, the full amount of wages or the full part of the profits due him as to the others of his grade.

The sailor shall likewise be considered as present in the event of his capture when defending the vessel, in order to enjoy the same benefits as the rest; but should he have been captured on account of carelessness or other negligence not related to the service, he shall only receive the wages due up to the day of his capture.

ART. 646. The vessel with her engines, rigging, equipment, and freights shall be liable for the pay earned by the crew engaged per month or for the trip, the liquidation and payment to take place between one voyage and the other.

After a new voyage has been undertaken, credits such as the former shall lose their right of preference.

ART. 647. The officers and the crew of the vessel shall be exempted from all engagements, if they deem it proper, in the following cases:

1. If, before the beginning of the voyage, the captain attempts to change it, or there occurs a naval war with the power to which the vessel was destined.

2. If a disease should break out and be officially declared epidemic in the port of destination.

3. If the vessel should change owner or captain.

ART. 648. By the complement of a vessel shall be understood all the persons embarked, from the captain to the cabin boy, necessary for her management, evolutions, and service, and there shall, therefore, be understood in the complement the crew, sailing masters, engineers, stokers, and other persons not having a specific name; but there shall not be included the passengers nor the persons the vessel is only transporting.

With regard to the personnel of vessels, see articles 6 et seq. of the regulations for the merchant marine.

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SECTION FOURTH.

Supercargoes.

ART. 649. Supercargoes shall discharge on board the vessel the administrative duties which the agent or shippers may have assigned them; they shall keep an account and registry of their transactions in a book which shall have the same conditions and requisites as required for the accounting book of the captain, and shall respect the latter in his duties as chief of the vessel.

The powers and liabilities of the captain shall cease, when there is a supercargo, with regard to that part of the administration legitimately conferred upon the latter, but shall continue in force for all acts which are inseparable from his authority and office.

Notwithstanding that there are stated here the duties of a supercargo, it should not be construed as meaning that there must always be a special officer with this name and these obligations, because the regulations for the merchant marine now in force do not include said official among the persons a vessel must carry.

ART. 650. All the provisions contained in the second section of Title III, book 2, with regard to qualifications, manner of making contracts, and liabilities of factors shall be applicable to supercargoes.

ART. 651. Supercargoes can not, without special authorization or agreement, make any transaction for their own account during the voyage, with the exception of the ventures which, in accordance with the custom of the port of destination, they are permitted to do.

Neither shall they be permitted to invest in the return trip more than the profits from the ventures, unless there is a special authorization thereto from the principals.

TITLE III.

SPECIAL CONTRACTS OF MARITIME COMMERCE.

SECTION FIRST.

Charter parties.

§ 1.—*Forms and effects of charter parties.*

ART. 652. A charter party must be drawn in duplicate and signed by the contracting parties, and when either does not know how or can not do so, by two witnesses at their request.

The charter party shall include, besides the conditions unrestrictedly stipulated, the following statements:

1. The kind, name, and tonnage of the vessel.
2. Her flag and port of registry.
3. The name, surname, and domicile of the captain.
4. The name, surname, and domicile of the agent, if the latter should make the charter party.

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5. The name, surname, and domicile of the charterer, and if he states that he is acting by commission, that of the person for whose account he makes the contract.

6. The port of loading and unloading.

7. The capacity, number of tons or weight, or measure which they respectively bind themselves to load and transport, or whether it is the total cargo.

8. The amount to be paid, stating whether it is to be a fixed amount for the voyage or so much per month, or for the space to be occupied, or for the weight or size of the goods of which the cargo consists, or in any other manner whatsoever agreed upon.

9. The amount of primage to be allowed the captain.

10. The days agreed upon for loading and unloading.

11. The lay days and extra lay days to be allowed and the rate of demurrage.

ART. 653. If the freight should be received without the contract having been signed, said contract shall be understood as executed in accordance with the contents of the bill of lading, which shall be the only instrument with regard to the freight by which to fix the rights and obligations of the owner, of the captain, and of the charterer.

ART. 654. The charter parties executed with the intervention of a broker, who certifies to the authenticity of the signatures of the contracting parties made in his presence, shall be full evidence in court; and if said signatures should not agree the ones identical with the signatures the broker must keep in his registry, if kept in accordance to law, shall be final.

The contracts shall also be admitted as evidence, even though a broker has not taken part therein, if the contracting parties acknowledge the signatures to the same as their own.

Should no broker have taken part in the charter party and should the signatures not have been acknowledged, doubts shall be decided by the invoice, and in the absence thereof by the proofs submitted by the parties.

Charter parties which include the requisites prescribed in the first paragraph of the article we annotate are final instruments, as conclusively indicated in number 6 of article 1429 of the law of civil procedure for the Peninsula, 1427 of that for Cuba and Porto Rico, and 1411 of that for the Philippines.

ART. 655. Charter parties executed by the captain in the absence of the agent shall be valid and efficient, even though in executing them he should have acted in violation of the orders and instructions of the agent or charterer; but the latter shall have a right of action against the captain to recover damages.

ART. 656. If in the charter party the time in which the loading and unloading is to take place is not stated, the customs of the port where this takes place shall be observed. After the period stipulated or the customary one has passed, and should there not be in the freight con-

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tract an express clause fixing the indemnification for the delay, the captain shall be entitled to demand demurrage for the usual and extra lay days which may have elapsed in loading and unloading.

ART. 657. If during the voyage the vessel should be rendered unserviceable, the captain shall be obliged to charter another one at his expense, in good condition, to take the cargo to its destination, for which purpose he shall be obliged to look for a vessel not only at the port of arrival but in the other ports within a distance of 150 kilometers.

If the captain should not furnish a vessel to take the cargo to its destination, either through indolence or malice, the freighters, after a demand of the captain to charter a vessel within a period which can not be extended, may charter one and apply to the judicial authority requesting that the charter party which may have been made be immediately approved.

The same authority shall judicially force the captain to confirm the charter made by the shippers for his account and under his liability.

If the captain, notwithstanding his efforts, should not find a vessel to charter, he shall deposit the cargo at the disposal of the freighters, to whom he shall communicate the facts on the first opportunity presenting itself, the charter being regulated in such cases by the distance covered by the vessel, there being no right to any indemnification whatsoever.

With regard to the mode of procedure in making the deposit of the cargo in this case, see the provisions of articles 2119 et seq. of the law of civil procedure now in force.

ART. 658. The charter shall be paid according to the conditions stipulated in the contract, and should they not be specific, or should they be ambiguous, the following rules shall be observed:

1. If the vessel has been chartered by months or by days, the charter shall begin to run from the day the loading of the vessel is begun.

2. In charters made for a fixed period, the charter shall begin on the same day.

3. If the freights are charged according to weight, the payment shall be made according to gross weight, including the wrappers, such as barrels or any other object containing the cargo.

ART. 659. The merchandise sold by the captain to pay for the necessary repairs to the hull, machinery, or equipment, or for unavoidable and urgent requirements, shall pay freight.

The price of this merchandise shall be fixed according to the success of the voyage, namely:

1. If the vessel should arrive safely at the port of destination, the captain shall pay the price which merchandise of the same kind brings at the port where it is sold.

2. If the vessel should be lost, the captain shall pay the price said merchandise would have brought in sale.

The same rule shall be observed in the payment of the freight in

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full if the vessel arrives at her destination, and in proportion to the distance covered if she should be lost beforehand.

ART. 660. Merchandise jettisoned for the common safety shall not pay freight; but its value shall be considered as general average, and shall be computed in proportion to the distance covered when it was jettisoned.

ART. 661. Neither shall merchandise which was lost by reason of shipwreck or stranding pay freight, nor that seized by pirates or enemies.

If the freight should have been paid in advance, it shall be returned, unless there was an agreement to the contrary.

ART. 662. If the vessel or the merchandise should be recovered, or should the goods of the shipwreck be picked up, the freight corresponding to the distance covered by the vessel transporting the cargo shall be paid; and should the vessel be repaired and transport said merchandise to the port of destination, the full freight shall be paid, without prejudice to what may be due by reason of the average.

ART. 663. Merchandise which is damaged or reduced on account of its character or bad quality and condition of the packing, or by reason of an accidental case, shall pay full freight, and as was stipulated in the freight contract.

ART. 664. The natural increase in weight or size of the merchandise loaded on the vessel shall accrue to the benefit of the owner, and shall pay the proper freight fixed in the contract for the same.

ART. 665. The cargo shall be specially liable for the payment of the freights, expenses, and duties arising therefrom, which must be reimbursed by the shippers, as well as for the part of the gross average which may be due, but it shall not be legal for the captain to delay unloading on account of delay in complying with this obligation.

Should there be reasons for distrust, the judge[1] or court, at the instance of the captain, may order the deposit of the merchandise until he has been paid in full.

ART. 665. (Philippines.) (See the note to this article for the Peninsula.)

ART. 666. The captain may request the sale of the cargo in so far as necessary to pay the freight, expenses, and averages due him, reserving the right of action to recover the balance due him therefor if the proceeds of the sale should not have sufficed to cover his credit.

With regard to the mode of procedure to request the sale of the cargo and to carry it out, the provisions of title 6 of the second part of the law of civil procedure, articles 2161 et seq. of that for the Peninsula, 2122 et seq. of that for Cuba and Porto Rico, and article 2082 of that for the Philippines are to be observed.

ART. 667. The goods loaded shall be liable in the first place for their freights and expenses during twenty days, to be counted from the date

[1] The word "judge" does not exist in the same article amended for the Philippine Islands.

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of their delivery or deposit. During this period the sale of the same may be requested, even though there be other creditors and the case of bankruptcy of the freighter or consignee should occur.

This right can not be made use of, however, on the goods which, after being delivered, were turned over to a third person without malice on the part of the latter and for a valuable consideration.

Article 2161 of the law of civil procedure for the Peninsula, and its equivalents of that for Cuba, Porto Rico, and for the Philippines, especially rule 11, is applicable to the procedure for enforcing the rights of the charterer.

ART. 668. If the consignee should not be found or should refuse to receive the cargo, the judge or court, at the instance of the captain, shall be obliged to order its deposit and the sale of the merchandise in so far as necessary to pay the freights and other expenses on the same.

The sale shall likewise take place when the goods deposited run the risk of deteriorating or by reason of their condition or for other reasons the expenses of preservation and custody should not be in proportion.

The law of civil procedure for the Peninsula, in its articles 2122 et seq., and those for Cuba, Porto Rico, and the Philippines in their equivalents treat of the mode of procedure for the sale of commercial goods.

§ 2.—*Rights and obligations of owners.*

ART. 699. The owners or the captain shall observe in charter parties the capacity of the vessel or that expressly designated in the registry of the same, a difference greater than 2 per cent between that stated and her true capacity not being permissible.

If the owners or the captain should contract to carry a greater amount of cargo than the vessel can hold, in view of her burden, they shall indemnify the freighters whose contracts they do not fulfill for the losses they may have caused them by reason of their default, according to the cases, viz:

If the vessel has been chartered by one freighter only, and there should appear to be an error or fraud in her capacity, and the charterer should not wish to rescind the contract, when he has a right thereto, the charter should be reduced in proportion to the cargo the vessel can not receive, the person from whom the vessel is chartered being furthermore obliged to indemnify the charterer for the losses he may have caused.

If, on the contrary, there should be several charter parties, and by reason of the want of space all the cargo contracted for can not be received, and none of the charterers desires to rescind the contract, preference shall be given to the person who has already loaded and arranged the freight in the vessel, and the rest shall take the place corresponding to them in the order of the dates of their contracts.

Should there be no priority, the charterers may load, if they wish, pro rata of the amounts of weight or space they may have engaged, and

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the person from whom the vessel was chartered shall be obliged to indemnify the loss and damage.

Article 2168 of the law of civil procedure for the Peninsula and 2119 of that amended for Cuba and Porto Rico are applicable to the provisions contained in the last two paragraphs of this article.

ART. 670. If the person from whom the vessel is chartered, after receiving a part of the freight, should not find sufficient to make up at least three-fifths of the amount the vessel can hold, at the price he may have fixed, he may substitute for the transportation another vessel inspected and declared suitable for the same voyage, the expenses of transfer being defrayed by him, as well as the increase, should there be any, in the price of the charter. Should he not be able to make this change, the voyage shall be undertaken at the time stated; and should no time have been fixed, within fifteen days from the time of beginning to load, should nothing to the contrary have been stipulated.

If the owner of the part of the freight already loaded should procure some more at the same price and under similar or proportionate conditions to those accepted for the freight received, the person from whom the vessel is chartered or the captain can not refuse to accept the rest of the cargo; and should he do so, the freighter shall have a right to demand that the vessel put to sea with the cargo she may have on board.

ART. 671. After three-fifths of the vessel is loaded, the person from whom she is chartered can not, without the consent of the charterers or freighters, substitute the vessel designated in the charter party by another one, under the penalty of making himself thereby liable for all the loss and damages occurring during the voyage to the cargo of the person who did not consent to the change.

ART. 672. If the vessel has been chartered in whole, the captain can not, without the consent of the person chartering her, accept freight from any other person; and should he do so, said charterer may force him to unload it and require him to indemnify him for the losses suffered thereby.

ART. 673. The person from whom the vessel is chartered shall be liable for all the losses caused the charterer by reason of the voluntary delay of the captain in putting to sea, according to the rules prescribed, provided he has been requested to put to sea at the proper time through a notary or judicially.

ART. 674. If the freighter should carry to the vessel more freight than that contracted for, the excess may be admitted in accordance with the price stipulated in the contract if it can be well stowed without injuring the other freighters, but if in order to stow said freight it should be necessary to stow it in such manner as to throw the vessel out of trim the captain must refuse it or unload it at the expense of its owner.

The captain may likewise, before leaving the port, unload the merchandise placed on board clandestinely, or transport it, if he could do

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so and keep the vessel in trim, demanding by way of freightage the highest price which may have been stipulated for said voyage.

ART. 675. If the vessel has been chartered to receive the cargo in another port, the captain shall appear before the consignee designated in the charter party, and, should the latter not deliver the cargo to him, he shall inform the person who chartered the vessel, and await his instructions, and the lay days agreed upon shall begin to run, or those allowed by custom in the port, unless there is a special agreement to the contrary.

Should the captain not receive an answer within the time necessary therefor, he shall make efforts to find freight; and should he not find any after the lay days and extra lay days have elapsed, he shall make a protest and return to the port where the charter was made.

The person who charters the vessel shall pay the charter in full, discounting the freight which may have been earned on the merchandise which may have been carried on the voyage out or on the return trip, if carried for the account of third persons.

The same shall be done if a vessel, having been chartered for the round trip, should not be given any cargo for her reutrn.

ART. 676. The captain shall lose the freight and shall indemnify the freighters if the latter should prove, even against the certificate of inspection, should one have taken place at the port of departure, that the vessel was not in a condition to navigate at the time of receiving the cargo.

ART. 677. The charter party shall be enforced if the captain should not have any instructions from the charterer, and a declaration of war or a blockade should take place during the voyage.

In such case the captain shall be obliged to make the nearest safe and neutral port, and request and await orders from the freighter; and the expenses incurred and salaries earned during the detention shall be paid as general average.

If, by orders of the freighter, the cargo should be discharged at the port of arrival, the freight for the voyage out shall be paid in full.

ART. 678. If the time necessary, in the opinion of the judge or court, in which to receive orders from the freighter should have elapsed without the captain having received any instructions, the cargo shall be deposited, and it shall be liable for the payment of the freight and expenses incurred by reason thereof, which shall be paid from the proceeds of the part first sold.

With regard to the mode of procedure for the deposit and sale of merchandise referred to in this article, we believe that article 2161 of the law of civil procedure in force in the Peninsula is applicable thereto. (Article 2122 of that for Cuba and Porto Rico.)

§ 3.—*Obligations of charterers.*

ART. 679. The charterer of an entire vessel may subcharter the whole or part thereof for the amounts he may consider most convenient, without the captain being allowed to refuse to receive on board the

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freight delivered by the second charterers, provided the conditions of the first charter are not changed, and that the person from whom the vessel is chartered be paid the full price agreed upon even though the full cargo is not embarked, with the limitation established in the next article.

A charterer who does not make up the full cargo he bound himself to ship shall pay the freightage of the amount he did not ship, if the captain did not take other freight to make up the cargo of the vessel, in which case he shall pay the first charterer any difference there may be.

ART. 681. If the charterer should ship goods different from those indicated at the time of executing the charter party, without the knowledge of the person from whom the vessel was chartered or of the captain, and should thereby give rise to losses, by reason of confiscation, embargo, detention, or other causes, to the person from whom the vessel was chartered or to the shippers, the person giving rise thereto shall be liable with the value of his shipment and furthermore with his property, for the full indemnity to all those injured through his offense.

ART. 682. If the merchandise shipped should have been for the purpose of illicit commerce, and were taken on board with the knowledge of the person from whom the vessel was chartered or of the captain, the latter, jointly with the owner of the same, shall be liable for all the losses which may be caused the other shippers, and even though it may have been agreed, they can not demand any indemnity whatsoever of the person from whom the vessel was chartered for the damage caused the same.

ART. 683. In case of making a port to repair the hull, machinery, or equipment of the vessel, the freighters shall be obliged to wait until the vessel is repaired, being permitted to unload her at their own expense should they deem it advisable.

If, for the benefit of the cargo subject to deterioration, the freighters, or the court, or the consul, or the competent authority in a foreign land should order the merchandise to be unloaded, the expense of loading and unloading shall be for the account of the former.

Articles 2147 to 2150 of the law of civil procedure for the Peninsula, 2108 of that for Cuba and Porto Rico, and 2068 of that for the Philippines are applicable to the foregoing in so far as the mode of procedure is concerned.

ART. 684. If the charterer, without the occurrence of any of the cases of force majeure mentioned in the foregoing article, should wish to unload his merchandise before arriving at the port of destination, he shall pay the full charter, the expenses of the stop made at his request, and the loss and damage caused the other freighters, should there be any.

ART. 685. In charters for transportation of general freight any of the freighters may unload the merchandise before the beginning of the voyage, and shall pay half the freight, the expense of shipping and

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reshipping the cargo, and any other damage which may be caused the other shippers

With regard to the mode of procedure see articles 2151 and 2152 of the law of civil procedure for the Peninsula, 2112 and 2113 of that for Cuba and Puerto Rico, and 2072 and 2073 of that for the Philippines.

ART. 686. After the vessel has been unloaded and the cargo placed at the disposal of the consignee, the latter must immediately pay the captain the freight due and the other expenses incurred by reason of said cargo.

The primage must be paid in the same proportion and at the same time as the freightage, all the changes and modifications to which the latter should be subject also governing the former.

The mode of procedure to enforce the right granted by the first part of this article is that prescribed in article 1544, number 1, together with article 1545 of the law of civil procedure for the Peninsula, 1543 and 1544 of that for Cuba and Puerto Rico and 1527 and 1528 of that for the Philippines.

ART. 687. The charterers and freighters can not abandon merchandise damaged on account of the character of the goods or by reason of an accidental case, for the payment of the freight and other expenses.

The abandoment shall be proper, however, if the cargo should consist of liquids and should they have leaked out, there not remaining in the coverings more than one-quarter of their contents.

Articles 2156 and 2157 of the law of civil procedure for the Peninsula, 2117 and 2118 of that for Cuba and Puerto Rico, and 2077 and 2078 of that for the Philippines, are related to the article we annotate.

§ 4.—*Total or partial rescissions of charter parties.*

ART. 688. A charter party may be annulled at the request of the charterer:

1. If before loading the vessel he should abandon the charter, paying half of the charter agreed upon.

2. If the capacity of the vessel should not agree with that stated in the certificate of the tonnage, or if there is an error in the statement of the flag under which she sails.

3. If the vessel should not be placed at the disposal of the charterer within the period and in the manner agreed upon.

4. If, after the vessel has put to sea, she should return to the port of departure, on account of risk of pirates, enemies, or bad weather, and the freighters should agree to unload her.

In the second and third cases the person from whom the vessel was chartered shall indemnify the charterer for the losses he may suffer.

In the fourth case the person from whom the vessel was chartered shall have a right to the charter in full for the voyage out.

If the charter should have been made per month, the charterers shall pay the full charter value for one month, if the voyage were to a port

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in the same waters, and two months, if the voyage were to a port in different waters.

From one port to another of the Peninsula and adjacent islands, the charter for one month only shall be paid.

5. If a vessel should make a port during the voyage in order to make urgent repairs and the freighters should prefer to dispose of the merchandise.

When the delay does not exceed thirty days, the freighters shall pay the full charter for the voyage out.

Should the delay exceed thirty days, they shall only pay the charter in proportion to the distance covered by the vessel.

ART. 689. At the request of the person from whom the vessel is chartered the charter party may be rescinded—

1. If the charterer at the termination of the extra lay days does not remove the cargo.

In such case the charterer must pay half the charter stipulated besides the demurrage for the lay days and extra lay days elapsed.

2. If the person from whom the vessel was chartered should sell her before the charterer has begun to load her and the purchaser should load her for his own account.

In such case the vendor shall indemnify the charterer for the losses he may suffer.

If the new owner of the vessel should not load her for his own account the charter party shall be respected, and the vendor shall indemnify the purchaser if the former did not inform him of the charter pending at the time of making the sale.

ART. 690. The charter party shall be rescinded and all actions arising therefrom shall be extinguished if, before the vessel puts to sea from the port of departure, any of the following cases should occur:

1. A declaration of war or interdiction of commerce with the power whose ports the vessel was going to visit.

2. A condition of blockade of the port of destination of said vessel, or the breaking out of an epidemic after the contract was executed.

3. The prohibition to receive the merchandise of the vessel at the said port.

4. An indefinite detention, by reason of an embargo of the vessel by order of the government or for any other reason independent of the will of the agent.

5. The impossibility of the vessel to navigate, without fault of the captain or agent.

The unloading shall be made for the account of the charterer.

ART. 691. If the vessel can not put to sea on account of the closing of the port of departure, or any other temporary cause, the charter shall be in force without any of the contracting parties having a right to claim damages.

The allowances and wages of the crew shall be considered as general average.

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During the interruption the charterer may, for his own account, unload and load at the proper time the merchandise, paying demurrage if the reloading should continue after the reason for the detention has ceased.

ART. 692. A charter party shall be partially rescinded, unless there is an agreement to the contrary, and the captain shall only be entitled to the charter for the voyage out, if, by reason of a declaration of war, closing of ports, or interdiction of commercial relations during the voyage, the vessel should make the port designated for such a case in the instructions of the charterer.

§ 5.—*Passengers on sea voyages.*

ART. 693. Should the passage price not have been agreed upon, the judge or court shall summarily fix it, after a statement of experts.

Although the law of civil procedure does not establish anything on this particular, because, as we have said, these provisions are new ones in our laws, we believe that the provisions applicable to summarily fix the price of the passage are the articles which treat of voluntary jurisdiction in commercial transactions, among others, article 2117, which refers to the appointment of experts.

ART. 694. Should the passenger not arrive on board at the time fixed, or should leave the vessel without permission from the captain, when the latter is ready to leave the port, the captain may continue the voyage and demand the full passage price.

ART. 695. The right to passage, if issued to a certain person, can not be transferred without the consent of the captain or of the consignee.

ART. 696. If before beginning the voyage the passenger should die, his heirs shall not be obliged to pay but half of the passage agreed upon.

If there should be understood in the price stipulated the expenses of board, the judge, or court,[1] hearing experts if he considers it necessary, shall fix the amount to be paid the vessel.

Should another passenger be received in the place of the deceased, nothing shall be paid by said heirs.

ART. 697. If before beginning the voyage it should be suspended through the sole fault of the captain or agent, the passengers shall be entitled to have their passage refunded and to recover loss and damages; but if the suspension was due to an accidental cause, or to force majeure, or to any other cause independent of the captain or agent, the passengers shall only be entitled to the return of the passage.

ART. 698. In case a voyage already begun should be interrupted the passengers shall be obliged only to pay the passage in proportion to the distance covered, and shall not be entitled to recover loss and damages if the interruption were due to an accidental cause or to force majeure, but have a right to indemnity it the interruption should have

[1] *Civil court*, according to the same article amended for the Philippines.

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been caused by the captain exclusively. If the interruption should be by reason of the disability of the vessel, and the passenger should agree to await her repair, he can not be required to pay any increased price of passage, but his support during the delay shall be for his own account.

In case the departure of the vessel is delayed the passengers have a right to remain on board and to board for the account of the vessel, unless the delay is due to an accidental cause or to force majeure. If the delay should exceed ten days, the passengers who request it shall be entitled to the return of the passage; and if it were due exclusively to the captain or agent they may furthermore demand indemnity for losses and damages.

A vessel which is exclusively destined to the transportation of passengers must take them directly to the port or ports of destination, no matter what the number of passengers may be, making all the stops indicated in her itinerary.

ART. 699. After the contract has been rescinded, before or after the commencement of the voyage, the captain shall have a right to claim payment for what he may have furnished the passengers.

ART. 700. In all that relates to the preservation of order and police on board the vessel the passengers shall conform to the provisions of the captain, without any distinction whatsoever.

ART. 701. The convenience or the interest of the passengers shall not obligate nor empower the captain to stand in shore or enter places which may take the vessel out of her course, nor to remain in the ports he must or is under the necessity of touching for a period longer than that required for the business of the navigation.

ART. 702. Should there not be an agreement to the contrary, there shall be understood as included in the price of the passage the accommodation of the passengers during the voyage; but should said board be for the account of the latter, the captain shall be under the obligation, in case of necessity, to furnish them the victuals at a reasonable price necessary for their maintenance.

See the provisions of article 616 of this code.

ART. 703. A passenger shall be looked upon as a shipper in so far as the goods he carries on board are concerned, and the captain shall not be liable for what said passenger may preserve under his immediate and private custody unless the damage arises from an act of the captain or of the crew.

ART. 704. The captain, in order to collect the price of the passage and expenses of maintenance, may retain the goods belonging to the passenger, and in case of the sale of the same he shall be given preference to the other creditors, a procedure identical to that for the collection of freights being observed.

ART. 705. In case of the death of a passenger during the voyage the captain is authorized, with regard to the body, to take the steps

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required by the circumstances, and shall carefully take care of the papers and goods there may be on board belonging to the passenger, observing the provisions of case No. 10 of article 612 with regard to members of the crew.

§ 6.—*Bills of lading.*[1]

ART. 706. The captain and the freighter of the vessel are obliged to draft the bill of lading, in which there shall be stated—

1. The name, registry, and tonnage of the vessel.
2. The name of the captain and his domicile.
3. The port of loading and that of unloading.
4. The name of the shipper.
5. The name of the consignee, if the bill of lading is issued to order.
6. The quantity, quality, number of packages, and marks of the merchandise.
7. The freight and the primage stipulated.

The bill of lading may be issued to bearer, to order, or in the name of a specific person, and must be signed within twenty-four hours after the cargo has been received on board, the freighter being allowed to request the unloading thereof at the expense of the captain should he not sign it, and in every case indemnity for the loss and damage suffered thereby.

ART. 707. Four true copies of the original bill of lading shall be made, all of which shall be signed by the captain and by the freighter. Of these copies the freighter shall keep one and send another to the consignee; the captain shall take two, one for himself and another for the agent.

There may, furthermore, be made as many copies of the bill of lading as may be considered necessary by the persons interested; but when it is issued to order or to the bearer there shall be stated in all the copies, be they either of the first four or of the subsequent ones, the destination of each one, stating whether it is for the agent, for the captain, for the freighter, or for the consignee. If the copy sent to the latter should be duplicated there must be stated in said duplicate this fact, and that it is not valid except in case of the loss of the first one.

ART. 708. The bills of lading issued to the bearer sent to the consignee shall be transferable through the actual delivery of the instrument; and by virtue of an indorsement, those issued to order.

In either case, the person to whom the bill of lading is transferred shall acquire all the rights and actions of the assignee or indorser with regard to the merchandise mentioned in the same.

A bill of lading includes the right to an execution, and the law of civil procedure for the Peninsula in its article 1544, number 1, together with the same number of

[1] The bill of lading is the receipt which the captain gives the shipper or freighter, and in which there is stated the fact of the shipment of the goods in question and the circumstances prescribed by law. It is a kind of supplement to the charter party.

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article 1545; that for Cuba and Porto Rico in articles 1542 and 1543, and that for the Philippines in articles 1526 and 1527, include them among the instruments by virtue of which judicial compulsion may be brought to bear, treated of in title 16 of book 2.

ART. 709. A bill of lading drawn up in accordance with the provisions of this title shall be proof as between all those interested in the cargo and between the latter and the underwriters, proof to the contrary being reserved by the latter.

ART. 710. Should the bills of lading not agree, and there should not be observed any correction or erasure in any of them, those possessed by the freighter or consignee signed by the captain shall be proof against the captain or agent in favor of the consignee or freighter; and those possessed by the captain or agent signed by the freighter shall be proof against the freighter or consignee in favor of the captain or agent.

ART. 711. The legitimate holder of a bill of lading who does not present it to the captain of the vessel before her unloading, obliging the latter thereby to unload it and place it in deposit, shall be liable for the cost of warehousing and other expenses arising therefrom.

ART. 712. The captain can not himself change the destination of merchandise. In admitting this change at the instance of the freighter, he must first take up the bills of lading he may have issued, under the penalty of being liable for the cargo to the legitimate holder of the same.

ART. 713. If before delivering the cargo a new bill of lading should be demanded of the captain, it being alleged that the previous one are not presented on account of their loss or for any other sufficient cause, he shall be obliged to issue it, provided security for the value of the cargo is given to his satisfaction; but without changing the consignment and stating therein the circumstances prescribed in the last paragraph of article 707, when the bills of lading referred to therein are in question, under the penalty otherwise to be liable for said cargo if not properly delivered through his fault.

ART 714. If before the vessel puts to sea the captain should die or should discontinue in his position through any accident, the freighters shall have a right to demand the new captain to ratify the first bills of lading, and the latter must do so, provided all the copies previously issued be presented or returned to him, and it should appear from an examination of the cargo that they are correct.

The expenses arising from the examination of the cargo shall be defrayed by the agent, without prejudice to the right of action of the latter against the first captain, if he ceased to be such through his own fault. Should said examination not be made, it shall be understood that the new captain accepts the cargo as it appears from the bills of lading issued.

ART. 715. Bills of lading will give rise to a most summary action or to judicial compulsion, according to the case, for the delivery of the cargo and the payment of the freightage and proper expenses.

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With regard to this point, see articles 1544 to 1559 of the law of civil procedure for the Peninsula, 1542 to 1557 of that for Cuba and Porto Rico, and 1526 et seq. of that for the Philippines.

ART. 716. If several persons should present bills of lading issued to the bearer or to order, indorsed in their favor, demanding the same merchandise, the captain shall prefer in delivering the same, the person presenting the copy first issued, with the exception of the case when the later one was issued on account of the loss of the first one, and if they are held by different persons.

In such case, as well as when second or subsequent copies issued without this proof are presented, the captain shall apply to the judge or court,[1] so that he may order the deposit of the merchandise, and that through him it may be delivered to the proper person.

ART. 717. The delivery of the bill of lading shall effect the cancellation of all the provisional receipts of prior date given by the captain or his subalterns for partial deliveries of the cargo which may have been made.

ART. 718. After the cargo has been delivered, the bills of lading which the captain signed shall be returned to him, or at least the copy by reason of which the delivery is made, with the receipt for the merchandise mentioned therein.

Delay on the part of the consignee shall make him liable for the damages which may be caused the captain thereby.

SECTION SECOND.

Loans on bottomry and respondentia.

ART. 719. A loan on bottomry or respondentia shall be considered that of which the repayment of the sum loaned and the premium stipulated, under any condition whatsoever, depends on the safe arrival in port of the goods on which it is made, or of their value in case of accident.

ART. 720. Loans on bottomry or respondentia may be executed—

1. By means of a public instrument.

2. By means of a bond signed by the contracting parties and the broker who took part therein.

3. By means of a private instrument.

In whatever manner this contract is executed, it shall be entered in the certificate of the registry of the vessel and shall be recorded in the commercial registry, without which requisites the credits originating from the same shall not have, with regard to other credits, the preference which, according to their nature, they should have, although the obligation shall be valid between the contracting parties.

The contracts made during a voyage shall be governed by the provisions of articles 583 and 611, and shall be effective with regard to third persons from the date of their execution, if they should be recorded in

[1] *Civil court*, according to the same article amended for the Philippines.

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the commercial registry of the port of registry of the vessel before eight days have elapsed from the date of her arrival. If said eight days should elapse without the record having been made in the commercial registry, the contracts made during the voyage of a vessel shall not have any effect with regard to third persons, except from the day and date of their entry.

In order that the bonds of the contracts celebrated in accordance with No. 2 may have force of law, they must conform to the registry of the broker who took part therein. In those celebrated in accordance with No. 3 the acknowledgment of the signature must precede.

Contracts which are not reduced to writing shall not be the basis for a judicial action.

Article 52 of the commercial registry regulations and 1429, No. 6, of the law of civil procedure for the Peninsula, 1427 of that for Cuba and Porto Rico, and 1411 of that for the Philippines, are in addition to and explain the provisions of the article we annotate.

See furthermore with regard to the provisions of the fourth and fifth paragraphs of this article, article 580, No. 9, and 731 of this code.

ART. 721. In a bottomry or respondentia bond there must be stated:

1. The kind, name, and registry of the vessel.
2. The name, surname, and domicile of the captain.
3. The name, surname, and domicile of the person making and those of the person receiving the loan.
4. The amount of the loan and the premium stipulated.
5. The time for repayment.
6. The goods pledged to secure repayment.
7. The voyage for which the risk is taken.

ART. 722. The bonds may be issued to order, in which case they shall be transferable by indorsement, and the assignee shall acquire all the rights and run all the risks corresponding to the indorser.

ART. 723. Loans may be made in goods and in merchandise, their value being fixed in order to determine the amount of the loan.

ART. 724. The loans may be constituted separately or jointly—

1. On the hull of the vessel.
2. On the rigging.
3. On the equipment, provisions, and fuel.
4. On the engine, if the vessel is a steamer.
5. On the cargo.

If the loan is constituted on the hull of the vessel, there shall be understood as also subject to the liability of the loan, the rigging, equipment and other goods, fuel, steam engines, and the freight earned during the voyage subject to the loan.

If the loan is made on the cargo, all that constitutes the same shall be subject to the repayment; and if on a particular object of the vessel or of the cargo, the object exclusively and specifically mentioned only shall be liable.

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ART. 725. No loans can be made on the salaries of the crew, nor on the profits which it is expected to earn.

ART. 726. If the lender should prove that he loaned a larger amount than the value of the article liable for the loan, by reason of fraudulent measures on the part of the person taking the loan, said loan shall only be valid for the amount at which said object is appraised by experts.

The surplus principal shall be returned with legal interest for the time of the duration of the disbursement.

ART. 727. If the full amount of the loan contracted to load the vessel should not be made use of for said cargo, the surplus shall be returned before clearing.

The same procedure shall be observed with regard to the goods taken as a loan if it should not have been possible to load them.

ART. 728. The loan which the captain takes at the point of residence of the owners of the vessel shall only affect that part of the latter which belongs to the captain, if the other owners or their agents should not have given their express authorization thereto or should not have taken part in the transaction.

If one or more of the owners should be requested to furnish the amount necessary to repair or provision the vessel, and should not do so within twenty-four hours, the interest which the parties in default may have in the vessel shall be liable for the loan in the proper proportion.

Outside of the residence of the owners the captain may contract loans in accordance with the provisions of articles 583 and 611.

Rule No. 8 of articles 2161 of the law of civil procedure for the Peninsula, 2122 of that for Cuba and Porto Rico, and 2082 of that for the Philippines, amplify the provisions contained in the second paragraph of this article.

ART. 729. Should the goods on which money is taken not be subjected to any risk, the contract shall be considered an ordinary loan, the borrower being under the obligation to return the principal and interest at the legal rate, if the interest stipulated should not have been lower.

ART. 730. Loans made during the voyage shall have preference to those made before the clearing of the vessel, and they shall be graduated by the inverse order to that of their dates.

The loans for the last voyage shall have preference over prior ones.

Should several loans have been made at a port made under stress and for the same purpose, all of them shall be paid pro rata.

See article 720 of this code.

ART. 731. The actions which may be brought by the lender shall be extinguished by the absolute loss of the goods on which the loan was made, if said loss arose from an accident of the sea at the time and during the voyage designated in the contract, and should it be proven that the cargo was on board; but this shall not take place if the loss were caused

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by reason of a defect in the goods, or through the fault or malice of the borrower, or through barratry on the part of the captain, or if it were caused by damages suffered by the vessel by reason of being engaged in contraband, or if it arose through loading the merchandise on a vessel other than that designated in the contract, unless this change should have been made by reason of force majeure.

The proof of the loss is incumbent upon the person who received the loan, as well as the proof of the existence in the vessel of the goods declared to the person making the loan as the object thereof.

See article 799 of this code.

ART. 732. Lenders on bottomry or respondentia shall suffer in proportion to their respective interest, the general average which may take place in the goods on which the loan was made.

In particular averages, in the absence of an express agreement between the contracting parties, the lender on bottomry or respondentia shall also contribute in proportion to his respective interest, should it not belong to the kind of risks excepted in the foregoing article.

ART. 733. Should it not have been stated in the contract for what period the lender runs the risk, he shall be liable with regard to the vessel, engines, rigging, and equipment from the moment said vessel puts to sea until she drops anchor in the port of destination, and with regard to the merchandise, from the time it is loaded on the shore or wharf of the port of shipment until unloaded in the port of consignment.

ART. 734. In case of shipwreck the amount liable for the return of the loan shall be reduced to the proceeds of the goods saved, after the costs of the salvage have been deducted.

If the loan were on the vessel or any of her parts, the freight money earned during the voyage for which said loan was contracted shall also be liable for its payment, in so far as possible.

ART. 735. If the same vessel should be the object of a loan on bottomry or respondentia and marine insurance, the value of what may be saved shall be divided, in case of shipwreck, between the lender and the underwriter, in proportion to the legitimate interest of each one, taking into consideration, for this purpose only, the principal with relation to the loan, and without prejudice to the right of preference of other creditors in accordance with article 580.

ART. 736. If there should be delay in the repayment of the principal or premiums of the loan, the former only shall bear interest.

See article 317 of this code.

SECTION THIRD.

Marine insurance.

§ 1.—*Form of contract.*

ART. 737. In order that a marine insurance contract be valid, it must be reduced to writing in a policy signed by the contracting parties.

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This policy shall be drafted and signed in duplicate, one copy being kept by each of the contracting parties.

ART. 738. The policy of the insurance contract shall contain, besides the conditions unrestrictedly established by the persons interested, the following requisites:

1. Date of the contract, stating the time it is consummated.

2. Names, surnames, and domiciles of the underwriter and of the insured.

3. Capacity in which the insured acts, stating whether for himself or for the account of another.

In the latter case the name, surname, and domicile of the person in whose name he takes out the insurance.

4. Name, port, flag, and registry of the vessel insured, or of the vessel carrying the goods insured.

5. Name, surname,[1] and domicile of the captain.

6. Port or roadstead where the merchandise insured has been or is to be loaded.

7. Port whence the vessel left or is to leave.

8. Ports or roadsteads where the vessel is to load, unload, or stop for any reason whatsoever.

9. Nature and kind of the goods insured.

10. Number of bales or packages, of whatsoever class, and their marks, should they have any.

11. Time of the beginning and conclusion of the risk.

12. Amount insured.

13. Price agreed upon for the insurance, and place, time, and manner of payment thereof.

14. Amount of the premium corresponding to the voyage out, and amount to the return voyage, if the insurance were for the round trip.

15. Obligation of the underwriter to pay the damage caused to the goods insured.

16. The place, period, and manner in which payment is to be made.

ART. 739. Insurance contracts and policies authorized by consular agents abroad, if the contracting parties or any of them should be Spaniards, shall have the same legal value as though they were drafted with the intervention of a broker.

ART. 740. There may be included in the same contract and policy the insurance of the vessel and that of the cargo, fixing the value of either and mentioning the amount of insurance on each object, without which statement the insurance shall be null.

Different premiums for each article insured may be fixed in the policy.

Several underwriters may sign the same policy.

ART. 741. In the insurance of merchandise the specific declaration of the same may be omitted, as well as of the vessel to carry it, when these details are not known by the insured.

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[1] According to the official edition of the Code amended for the Philippines, the word *surname* does not exist in this number, but it is probably an error in the copy.

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If the vessel in such case should suffer an accident on the seas, the insured shall be under the obligation to prove, besides the loss of the vessel, her departure from the port of loading, the shipment for his account of the goods insured, and the value thereof, to demand indemnity.

ART. 742. The insurance policies may be issued to the order of the insured, in which case they shall be negotiable.

§ 2.—*Goods which can be insured and their appraisement.*

ART. 743. The following can be the subject of marine insurance:

1. The hull of a vessel in ballast or loaded, in a port or on a voyage.
2. The rigging.
3. The engine, should the vessel be a steamer.
4. All the equipment and articles which constitute the fittings.
5. Provisions and fuel.
6. The amounts secured on bottomry or respondentia.
7. The amount of the freights and the probable profit.
8. All the commercial goods subject to the risk of navigation the value of which can be specifically fixed.

ART. 744. All or a part of the goods mentioned in the foregoing article may be insured jointly or separately, in time of peace or during war, for a voyage or for a definite time, for a single voyage or for a round trip, on good or bad advices.

ART. 745. If it should be generally stated in the policy that the insurance is taken on the vessel, there shall be understood therein the engines, rigging, equipment, and all that belongs to the vessel; but her cargo shall not be included even though it belongs to the shipowner.

In a general insurance of merchandise, there shall not be included therein coined metals, or metals in ingots, precious stones, nor munitions of war.

ART. 746. The insurance of the freightage may be taken by the shipper, by the ship owner, or by the captain, but the latter can not insure the advance they may have received on account of their freight unless they have expressly stipulated that, in case the freight is not earned by reason of shipwreck or loss of the cargo, they shall return the amount received.

ART. 747. In freight insurance the amount thereof must be stated, which can not exceed the amount appearing in the agreement.

ART. 748. The insurance of profits shall be governed by the stipulations agreed to by the contracting parties, but there shall be stated in the policy:

1. The specific amount at which the insurer fixes the profit, after the cargo has arrived safely and been sold at the port of destination.
2. The obligation of reducing the insurance if, comparing the amount obtained at the sale, after discounting the expenses and freights, with the purchase price, it should appear less than that fixed in the insurance.

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ART. 749. The underwriter may have the goods insured by him reinsured by others, in whole or in part, with the same or with a different premium. The insured may likewise insure the cost of the insurance and the risk he may run in collecting the insurance from the first underwriter.

ART. 750. If the captain should take out the insurance, or the owner of the goods insured should be on the same vessel which carries them, 10 per cent shall always be left to his risk should there be no agreement to the contrary.

ART. 751. In the insurance of a vessel there shall always be understood that the insurance only covers four-fifths of her value, and that the insured runs the risk for the remaining fifth, unless an express agreement to the contrary is included in the policy.

In such case, and in that of the foregoing article, there shall be discounted from the insurance the amount of the loans taken on bottomry or respondentia.

ART. 752. The signing of the policy shall constitute a legal presumption that the underwriters accepted the appraisement made therein of the goods insured as correct, excepting cases of malice or fraud.

If the appraisement should appear to be exaggerated, the proceedings shall be according to the cases, viz:

1. If the exaggeration should have arisen from error, and not from malice imputable to the insured, the insurance shall be reduced to its true value, fixed by the contracting parties by common consent, or through an expert opinion. The insured shall return the excess of the premium received, retaining, however, one-half per cent of said excess.

If the exaggeration should have been fraudulent on the part of the insured, and the underwriter proves it, the insurance shall be null for the insured, and the underwriter shall gain the premium without prejudice to the criminal action which he may bring.

ART. 753. Reduction to the value of the national currency, if the value were fixed in foreign money, shall be made at the current rate at the place and on the day on which the policy was signed.

With regard to the provisions of this article, the supreme court declared in an opinion of January 18, 1881: That every stipulation made in foreign money shall be converted for payment into its equivalent in money of the kingdom in accordance with the rate where the contract is to be consummated, and that although a pound sterling is imaginary money in Spain, it is used and generally admitted in commerce, and in drafts, there being no difficulty in fixing its equivalent in pesetas by means of the official exchange daily announced in the exchange and in the *Gaceta de Madrid*.

ART. 754. If, at the time of making the contract, the value of the goods insured has not been specifically fixed, it shall be determined:

1. By the invoices of consignment.

2. By a statement of brokers or experts, who shall act, taking as a basis of their judgment the price of the goods in the port of departure, adding thereto the expenses of shipment, freight, and customs.

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If the insurance is on goods returning from a country where commerce is only exchange, the value shall be fixed according to that of the goods exchanged in the port of departure, with all the expenses.

§ 3.—*Obligations of the underwriter and of the insured.*

ART. 755. The underwriters shall indemnify the loss and damage which the articles insured may suffer for any of the following causes:

1. Stranding or embayment of the vessel, with or without breakage.
2. Gales.
3. Shipwreck.
4. Accidental collision.
5. Change of course during the voyage of the vessel.
6. Jettison.
7. Fire or explosion, if it occurs in merchandise, whether on board or on land, provided it has been removed by order of a competent authority to repair the vessel or to benefit the cargo, or fire by reason of spontaneous combustion in the coal bunkers of the vessel.
8. Capture.
9. Spoliation.
10. Declaration of war.
11. Embargo by order of the Government.
12. Retention by order of a foreign power.
13. Reprisals.
14. Any other accidents of the sea or risks.

The contracting parties may stipulate the exceptions they may deem proper, mentioning them in the policy, without which requisite they shall have no effect.

Articles 789, 791, 840, 809, number 8, 768, and 806, et seq., of this code are connected with the provisions of this article.

ART. 756. The underwriters shall not be liable for the loss and damage suffered by goods insured by reason of any of the following causes, even though they have not been excluded in the policy:

1. Voluntary change in the voyage or in the vessel, without the express consent of the underwriters.
2. Voluntary separation from a convoy, when it was stipulated that she would travel with one.
3. Extension of the voyage to a port farther off than that designated in the insurance.
4. Arbitrary provisions and contrary to the charter party or to the bill of lading, adopted by order of the shipowner, freighters, or charterers.
5. Barratry on the part of the master, unless it is the object of insurance.
6. Waste, leakage, and expenses arising from the nature of the goods insured.
7. Absence of the instruments prescribed in this code, in the marine ordinances and regulations, or those of navigation, or omissions of any

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other class whatsoever on the part of the captain, in contravention to administrative provisions, unless the barratry of the master should have been taken for the account of the underwriter.

In any of these cases the underwriters shall collect the premium, provided they began to run the risk.

The supreme court, in an opinion of November 15, 1879, established: That there is not in the code of commerce nor in the common law any provision which restrains the owner of an insured vessel from the privilege of conveying the same or from removing the captain during the period of the insurance without the knowledge or consent of the underwriter, nor shall there be considered as arbitrary provisions and contrary to the charter party the resolutions adopted by the agent with regard to the captain, officers, and crew granted them in articles 264 et seq. of the old code.

ART. 757. In the insurance of cargo taken for a round trip, if the insured should not find any freight for the return voyage or should only be able to get less than two-thirds, the return premium shall be reduced in proportion to the cargo brought, the underwriter being furthermore granted one-half per cent for the part he does not carry.

However, no reduction shall be allowed if the cargo was lost on the voyage out, unless there is a special agreement modifying the provisions of this article.

ART. 758. If the cargo should have been insured by several underwriters for different amounts, but without specifically mentioning the objects of the insurance, indemnification shall be paid, in case of loss or damage, by all the underwriters in proportion to the amount insured by each one.

ART. 759. If different vessels should be designated to carry the goods insured, but without stating the amount to be shipped on each vessel, the insured may distribute the cargo as may be most convenient for him, or ship it on one vessel only, the liability of the underwriter not being annulled thereby. But if express mention should have been made of the amount insured on each vessel, and the cargo should be put on board in different amounts to those fixed for each one, the underwriter shall not have any further liability than that he may have contracted for each vessel. However, he shall charge one-half per cent of the excess over the amount stipulated which may have been loaded thereon.

If a vessel should be left without any cargo, the insurance with regard to the same shall be understood as annulled by means of the aforementioned payment of one-half per cent on the excess shipped by the other ones.

ART. 760. If by reason of the disability of the vessel before leaving the port, the cargo should be transferred to another one, the underwriters shall be allowed to choose between continuing or annulling the contract and paying the averages which may have occurred; but if the disability should take place after the beginning of the voyage, the underwriters shall run the risk, even though the vessel should have a different tonnage and flag than that designated in the policy.

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ART. 761. If the time during which the risks are to run for the account of the underwriter is not fixed in the policy, the provisions of article 733 with regard to loans on bottomry and respondentia shall be observed.

ART. 762. In insurance for a fixed period, the liability of the underwriter shall cease at the time the period fixed expires.

ART. 763. If for the convenience of the insured, the merchandise should be unloaded at a port closer than that designated as the destination of the voyage, the underwriter shall collect the premium stipulated without any reduction.

ART. 764. There shall be understood as included in the insurance, if not expressly excluded in the policy, the stopping places which it is required to make for the preservation of the vessel or of her cargo.

ART. 765. The insured shall communicate to the underwriter by the first mail following that by which he receives them, and by telegraph, should there be one, the notices referring to the course of the navigation of the vessel insured, and the damages or losses suffered by the goods insured, and shall answer for the loss and damages which may arise through his omission.

See the provisions of article 795 of this code.

ART. 766. If merchandise insured for the account of the captain who commands the vessel on which it was loaded should be lost, the former must prove its purchase to the underwriters by means of the invoices of the vendors; and the shipment and transportation on the vessel, by means of a certificate of the Spanish consul, or competent authority, where there is one, of the port where it was loaded, and by means of the other documents of entry and clearance of the customs-houses.

The insured who carry their own merchandise shall have the same obligations, unless there is an agreement to the contrary.

ART. 767. If an increase in the premium in case of war should have been stipulated, and said increase should not have been fixed, the latter shall be determined in the absence of agreement between the parties interested, by experts appointed in the manner established in the law of civil procedure, taking the circumstances of the insurance and the risks run into consideration.

With regard to the appointment of experts in insurance contracts, see articles 2178 and 2179 of the law of civil procedure for the Peninsula, 2136 and 2137 of that for Cuba and Puerto Rico, and 2096 and 2097 of that for the Philippines.

ART. 768. The gratuitous restitution of the vessel or of the cargo to the captain by the capturers shall redound to the benefit of the respective owners without the obligation on the part of the underwriters to pay the amounts they insured.

ART. 769. All claims arising from insurance contracts must be accompanied with the documents proving—

1. The voyage of the vessel, with the oath of the captain or a certified copy of the log book.

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2. The shipment of the goods insured, with the invoice and documents of discharge of the custom-house.

3. The insurance contract, with the policy.

4. The loss of the goods insured, with the documents of number 1, and a statement of the crew, if necessary.

The discount of the goods insured shall furthermore be fixed after an examination by experts.

The underwriters may contradict the claim and they shall be permitted to adduce proof in court.

With regard to the provisions contained in the last paragraph but one of this article, the supreme court established, in an opinion of July 7, 1882: That an insurance company against which a claim has been brought can not be adjudged to pay the amount claimed if the proper appraisal of experts did not previously take place.

ART. 770. After the said documents have been presented, the underwriter shall, if he finds them correct and the loss proven, pay the insured the indemnity within the period stipulated in the policy, and in the absence of any fixed period, within ten days after the claim.

But if the underwriter should deny the claim and judicially contest it, he may deposit the amount appearing from the proofs, or deliver it to the insured on giving sufficient security, either being decided by the judge or court [1] according to the cases.

ART. 771. If the vessel insured should suffer damage by reason of an accident at sea, the underwriter shall pay only two-thirds of the expenses of repairing, should they be made or not. In the first case the amount of the expenses shall be proven by the means recognized in law, and in the second case it shall be appraised by experts.

Only the agent or captain authorized therefor may decide not to repair the vessel.

See article 751 of this code.

ART. 772. If by reason of the repair the value of the vessel should be increased by more than one-third of that fixed in the insurance, the underwriter shall pay two-thirds of the cost of repair, discounting the greatest value which the latter may have given the vessel.

But if the insured should prove that the greater value of the vessel does not arise from the repairs, but because the vessel is a new one and the damage occurred on the first voyage, or that the engines or rigging and equipment were broken, the deduction of the increase in value shall not be made, and the underwriter shall pay the two-thirds of the costs of repair, in accordance with rule 6 of article 854.

ART. 773. If the costs of the repairs should exceed three-fourths of the value of the vessel, it shall be understood that she is disabled to navigate, and her abandonment shall be proper; and should this declaration not be made the underwriters shall pay the amount of the insurance, after deducting the value of the vessel damaged or of her remains.

ART. 774. When indemnity arising from general averages is in question at the termination of the adjustment, liquidation, and payment of

[1] *Civil court* according to the same article amended for the Philippines.

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the same, the insured shall turn over to the underwriter all the accounts and documents proving the same produced to claim the indemnity of the amounts which may have been due him. The underwriter shall examine the liquidation in his turn, and should he find it in accordance with the conditions of the policy, he shall be obliged to pay the insured the proper amount within the period stipulated or, in the absence thereof, within the period of eight days.

The sum due shall earn interest from this date.

If the underwriter should not find the liquidation in accordance with the stipulation of the policy, he may bring an action before the judge or court of competent jurisdiction within the said period of eight days, depositing the amount claimed.

ART. 775. In no case can a claim be brought against the underwriter for a sum higher than the total amount of insurance, even though the vessel saved, after an arrival under stress for the repair of damages should be lost, or that the amount to be paid by reason of general average amounts to more than the insurance, or that the cost of different averages and repairs on one voyage or within the period of the insurance, exceeds the amount insured.

ART. 776. In cases of particular average to the merchandise insured, the following rules shall be observed:

1. All that which may have disappeared by reason of theft, loss, sale on the voyage, deterioration, or by reason of any of the marine accidents included in the insurance contract, shall be proven in accordance with the value of the invoice, or in the absence thereof, by the value given the same in the insurance, and the underwriter shall pay the amount thereof.

2. If the vessel having safely arrived in port, the merchandise should be damaged totally or in part, the experts shall state the value it would have had if it had arrived in good condition, and the value thereof in its damaged condition.

The difference between both net amounts, after deducting furthermore the customs duties, freights, and other similar expenses, shall constitute the value or amount of the average, adding thereto the expenses for the experts and others, should there be any.

If the average should have involved the entire cargo insured the underwriter shall pay the loss resulting; but if it only involves part, the insured shall be paid in the proper proportion.

If the probable profit of the freighter should have been the object of a special insurance it shall be liquidated separately.

ART. 777. After the particular average of the vessel has been fixed by experts, the underwriter shall justify his right in accordance with the provisions at the end of number 9 of article 580, and the insured shall pay in accordance with the provisions contained in articles 858 and 859.

ART. 778. The underwriter can not oblige the insured to sell the object of the insurance in order to fix its value.

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ART. 779. If the appraisement of the goods insured should be made in a foreign country, the laws, usages, and customs of the place where it is to be made shall be observed, without prejudice to submitting to the provisions of this code for the proof of the facts.

ART. 780. After the amount underwritten has been paid by the insurer he shall be subrogated in the place of the insured to all the rights and actions which may be brought against the persons who may have caused the loss of the goods insured through their malice or fault.

§ 4.—*Cases in which insurance contracts are annulled, rescinded, or modified.*

ART. 781. An insurance contract involving the following shall be void:

1. A vessel or merchandise subject to a previous loan on bottomry or respondentia for their full value.

If the loan on bottomry or respondentia should be for the full value of the vessel or merchandise, the insurance with regard to the part over and above the amount of the loan may be allowed to continue in force.

2. The lives of the crew and passengers.

3. The pay of the crew.

4. Goods of illicit commerce in the country of the flag of the vessel.

5. Vessels customarily dedicated to contraband, the damage or loss arising therefrom, in which case the underwriter shall be paid one-half per cent of the amount insured.

6. A vessel which, without the occurrence of any force majeure preventing it, does not put to sea within six months following the date of the policy, in which case, besides the annulment, a payment of one-half per cent to the underwriter of the sum insured shall be proper.

7. A vessel which does not undertake the voyage contracted for, or goes to a different port from that stipulated, in which case the payment to the underwriter of one-half per cent of the amount insured shall be proper.

8. Articles in the appraisment of which intentional fraud was committed.

ART. 782. If different insurance contracts have been made with regard to the same article without fraud, the first one only shall be valid, provided it covers the full value thereof.

The underwriters of a subsequent date shall be exempted from all liability and shall receive one-half per cent of the amount insured.

If the first contract should not cover the full value of the article insured, the liability for the excess shall be incurred by the subsequent underwriters in order of dates.

ART. 783. The insured shall not be exempted from paying the full premium to the different underwriters if he should not inform the subsequent ones of the rescission of their contracts before the article insured has arrived at the port of destination.

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ART. 784. An insurance taken out after the loss, average or safe arrival of the insured article at the port of destination, shall be void whenever it can be reasonably presumed that one or the other had arrived to the knowledge of any of the contracting parties.

This presumption shall exist when the notice has been published in a place and the time necessary to communicate it by mail or by telegraph to the place where the insurance was underwritten has elapsed, without prejudice to the other proofs which may be brought by the parties.

ART. 785. An insurance contract on good or bad advices shall not be annulled unless the knowledge of the occurrence expected or feared by any of the contracting parties at the time of making the contract is proven.

In case of proving the same the defrauder shall pay the underwriter one-fifth of the amount insured, without prejudice to the criminal liability which may be proper.

ART. 786. If the person taking the insurance, with the knowledge of the total or partial loss of the goods insured, should be acting for the account of another, he shall be personally liable for the act as if he had acted for his own account, and if, on the contrary, the agent should be innocent of the fraud committed by the owner insured, all the liabilities shall be incurred by the latter, who shall always be obliged to pay the underwriters the premium agreed upon.

Similar provisions shall govern with regard to the insurer when he underwrites the insurance through an agent and has knowledge of the saving of the articles insured.

ART. 787. If the risk of the goods insured is pending and the underwriter or the insured are declared in bankruptcy, either shall be entitled to demand security, the latter to cover the liability of the risk and the former to obtain the payment of the premium; and if the receivers should refuse to give said security within three days following the demand the contract shall be rescinded.

Should an accident occur within said three days without the security having been given, there shall be no right to the indemnity nor to the premium of the insurance.

ART. 788. If an insurance has been underwritten fraudulently by several underwriters, and one or more of the same acted in good faith, the latter shall be entitled to receive the full premium of their insurance of those who may have acted in bad faith, the insured being exempted from all liability.

Similar procedure shall be observed with regard to the insured with the underwriters, when any of the former should be guilty of the fraudulent insurance.

§ 5.—*Abandonment of goods insured.*

ART. 789.—The insured may abandon for the account of the underwriter the goods insured, demanding of the underwriter the amount stipulated in the policy:

1. In case of shipwreck.

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2. In case of disability of the vessel to navigate, by reason of stranding, break down, or any other accident of the sea.

3. In case of capture, embargo, or detention by order of the national or a foreign government.

4. In case of the total loss of the goods insured, by such being understood an accident reducing the value insured by three-quarters.

Other damages shall be considered averages and shall be suffered by the proper persons, according to the conditions of the insurance and the provisions of this code.

An abandonment shall not be proper in either of the first two cases when a shipwrecked, stranded, or disabled vessel was floated and repaired to continue the voyage to the port of destination, unless the cost of the repair exceeds three-quarters of the value for which said vessel was insured.

ART. 790. If the vessel should be repaired, the underwriters shall be liable only for the expenses arising from the grounding or other damage the vessel may have suffered.

ART. 791. In cases of shipwreck and capture the insured shall be obliged to personally take the steps advisable under the circumstances, in order to save or recover the goods lost, without prejudice to the abandonment he may make at the proper time; and the underwriter shall be obliged to reimburse him for the legitimate expenses caused by the saving, to the value of the goods saved, which may be attached for nonpayment of said expenses.

ART. 792. If the vessel should be totally disabled to navigate the insured shall be obliged to inform the underwriter thereof, by telegraph if possible, and otherwise, by the first mail following the receipt of the news. The persons interested in the cargo who may be present, or in their absence the captain, shall adopt all the measures possible to take the cargo to the port of destination in accordance with the provisions of this code, in which case all the risks and cost of unloading, storage, reshipment or transfer, excess of freight, and all other expenses, until the goods insured are unloaded at the point designated in the policy, shall be for the account of the underwriter.

ART. 793. Without prejudice to the provisions of the foregoing article, the underwriter shall be allowed a period of six months in which to transport the merchandise to its destination, if the disability should have occurred in the seas around Europe from the Straits of Sound to the Bosphorus, and one year if it occurred at a more distant point. Said period shall begin to be counted from the day the insured informed him of the accident.[1]

ART. 793. (Philippines.) Without prejudice to the provisions of the foregoing article, the underwriter shall be allowed a period of six months in which to transport the merchandise to its destination, if the disability should have occurred in the seas around *the Philippines from the ports*

[1] No amendment whatsoever has been made in the adaptation of this article to Cuba and Porto Rico, although it should have been made in the same manner as for the Philippines.

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of China, in the sea of the same name, to those of the Yellow Sea and Straits of Sunda and Malacca, and one year if it occurred at a more distant point. Said period shall begin to be counted from the day the insured informed him of the accident.

ART. 794. If, notwithstanding the efforts made by the persons interested in the cargo, by the captain and by the underwriters, to transport the merchandise to the port of its destination, in accordance with the provisions of the foregoing articles, no vessel should be found on which to transport it, the owner and insured may abandon the same.

ART. 795. In case of the interruption of the voyage by reason of embargo or forced detention of the vessel, the insured shall be obliged to inform the underwriters thereof as soon as he receives notice of the same, and he can not abandon it until the periods fixed in article 793 have elapsed.

He shall furthermore be obliged to assist the underwriters, in so far as may be in his power, to obtain the raising of the embargo, and must personally take all the steps necessary for the purpose, if the underwriters, being in a remote country, can not act in concurrence with him.

ART. 796. There shall be understood as abandoned with the vessel the freight of the merchandise which may be saved, even though paid in advance, it being considered as belonging to the underwriters, reserving the rights of other creditors in accordance with the provisions of article 580.

ART. 797. The notice shall be understood as received for the limitation of the periods fixed in article 793, from the time it is made public, either through the newspapers, or as a confirmed rumor among the merchants of the residence of the insured, or when it can be proven that the latter received notice of the accident from the captain, consignee, or any correspondent by mail or telegraph.

ART. 798. The insured shall also have a right to make the abandonment after one year has elapsed in ordinary voyages, and two in long ones, without receiving news of the vessel.

In such case he may demand of the underwriter the indemnity for the value of the amount insured without being obliged to prove the loss; but he must prove the absence of news by means of a certificate of a consul or marine authority of the port of departure, and another from the consuls or marine authorities of the ports of destination of the vessel and of her registry, stating that said vessel has not arrived at said ports during the period fixed.

In order to make use of this action, the period stated in article 804 shall be allowed, short voyages being considered those made to the coasts of Europe, and to those of Asia and Africa via the Mediterranean; and with regard to America those undertaken to ports situated between the river of La Plata and St. Lawrence, and to the islands situated between the coasts of Spain and the points designated in this article.

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ART. 798. (Cuba and Porto Rico.) The insured shall also have the right to make the abandonment after one year has elapsed in ordinary voyages and two in long ones without receiving news of the vessel.

In such case he may demand of the underwriter the indemnity for the value of the amount insured without being obliged to prove the loss; but he must prove the absence of news by means of a certificate of a consul or marine authority of the port of departure, and another from the consuls or marine authorities of the ports of destination of the vessel, and of her registry, stating that said vessel has not arrived at said ports during the period fixed.

In order to make use of this action, the period stated in article 804 shall be allowed, short voyages being considered those made to the coasts *of the waters of the Antilles, Gulf of Mexico, Yucatan, Guatemala, Honduras, Nicaragua, and Costa Rica in its eastern portion, the United States, Mexico, Brazil, and other points of the eastern coast of America, without going around Cape Horn; and with regard to Europe and Africa, those which may be undertaken to points situated on the coasts of Spain, Portugal, France, Italy, Austria, England, the Netherlands, Germany, Denmark, Sweden and Norway, Russia, or in points in the Mediterranean and western coast of Africa, and the islands lying between the coasts of eastern America and the points designated in this article.*

ART. 798. (Philippines.) The insured shall also have a right to make the abandonment after one year has elapsed in ordinary voyages and two in long ones without receiving news of the vessel.

In such case he may demand of the underwriter the indemnity for the value of the amount insured without being obliged to prove the loss, but he must prove the absence of news by means of a certificate of a consul or marine authority of the port of departure, and another from the consuls or marine authorities of the ports of destination of the vessel and of her registry, stating that said vessel has not arrived at said ports during the period fixed.

In order to make use of this action, the period stated in article 804 shall be allowed, short voyages being considered those made to the coasts *of the Philippines and ports of China in the China Sea, stopping places in the Yellow Sea, and ports in the Strait of Malacca, Indian Ocean, Red Sea, Europe, and the European islands.*

ART. 799. If the insurance should have been taken for a limited period, a legal presumption that the loss took place within the period agreed upon shall exist, unless proof is adduced by the underwriter to the effect that the loss took place after his liability had terminated.

ART. 800. The insured, at the time of making the abandonment, must declare all the insurances taken out on the goods abandoned, as well as of the loans on respondentia made on the same, and until this declaration has been made the period within which he is to be reimbursed for the value of the goods shall not begin to be counted.

Should he commit fraud in this declaration, he shall lose all the rights

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he may have to the insurance, and shall be liable for the loans he may have secured on the goods insured, notwithstanding their loss.

ART. 801. In case of the capture of the vessel, and should the insured not have time to act in concurrence with the underwriter, nor to await instructions from him, he in person, or the captain, in his absence, may redeem the goods insured, informing the underwriter at the first opportunity.

The latter may or may not accept the agreement made by the insured or by the captain, communicating his decision within the twenty-four hours following the notification of the agreement.

Should he accept it, he shall immediately deliver the amount agreed upon as redemption, and the subsequent risks of the voyage shall be for his account, in accordance with the stipulations of the policy. Should he not accept it, he shall pay the insurance, losing all rights to the goods redeemed; and if within the period fixed he does not render his decision, it shall be understood that he refuses to accept the agreement.

ART. 802. If by reason of the recapture of the vessel the insured should regain possession of his goods, all the costs and damages caused by the loss shall be considered average, and shall be suffered by the underwriter; and if, by reason of the recapture, the goods insured should pass into the possession of a third person, the insured may make use of the right of abandonment.

ART. 803. After the abandonment has been admitted or declared admissible in a suit, the ownership of the goods abandoned, with the increase or deterioration suffered by the same from the time of abandonment, shall be vested in the underwriter, without being exempted from the payment of the repair of the vessel legally abandoned.

The supreme court, in an opinion of October 31, 1868, declared: That the admission of the abandonment of a vessel, or a legal declaration that the abandonment has taken place, transfers to the underwriter the goods abandoned in their actual state, with their increase of deterioration. A real delivery of said goods shall not be necessary, but only the transfer of the corresponding values and rights when the former could not be kept or should have been lost.

ART. 804. Abandonment shall not be admissible—

1. If the loss should have taken place before the beginning of the voyage.

2. If the abandonment is made in a partial or conditional manner, without including therein all the goods insured.

3. If the intention of abandonment is not brought to the notice of the underwriters within the four months following the day on which the insured may have had knowledge of the loss, and if the abandonment is not effected within ten months counted in the same manner, with regard to accidents occurring in the ports of Europe, in those of Asia and Africa, in the Mediterranean, and in those of America from the La Plata to the St. Lawrence rivers, and within eighteen months in other ports.

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4. If it does not take place through the owner himself, or by a person specially authorized by him, or by the one authorized to take out the insurance.

In an opinion of October 31, 1868, the supreme court established with regard to number 2 of this article: That the underwriters acquire possession of the goods insured by virtue of their formal abandonment, which must be total and not partial, provided it was possible to preserve them.

ART. 804. (Cuba and Porto Rico.) Abandonment shall not be admissible—

1. If the loss should have occurred before the beginning of the voyage.

2. If the abandonment is made in a partial or conditional manner without including therein all the goods insured.

3. If the intention of abandonment is not brought to the notice of the underwriters within the four months following the day on which the insured may have had knowledge of the loss, and if the abandonment is not effected within ten months, counted in the same manner with regard to accidents occurring in the *West Indian waters, Gulf of Mexico, and Eastern America, without going round Cape Horn, and in those of Europe, west coast of Africa, and the intermediate islands mentioned in article 798,* and within eighteen months in other ports.

4. If it does not take place through the owner himself, or by a person specially authorized by him, or by the one authorized to take out the insurance.

ART. 804. (Philippines.) Abandonment shall not be admissible—

1. If the loss should have taken place before the beginning of the voyage.

2. If the abandonment is made in a partial or conditional manner, without including therein all the goods insured.

3. If the intention of abandonment is not brought to the notice of the underwriters within four months following the day on which the insured may have had knowledge of the loss, and if the abandonment is not effected within ten months, counted in the same manner with regard to accidents occurring in the ports *of the Philippines, China, China Sea, stopping places in the Yellow Sea and ports in the Straits of Malacca, Indian Ocean, Red Sea, and in Europe and the European islands.*

4. If it does not take place through the owner himself, or by a person specially authorized by him, or by the one authorized to take out the insurance.

ART. 805. In case of abandonment the underwriter shall be obliged to pay the amount of the insurance within the period fixed in the policy, and should no period have been stated therein, within sixty days from the admission of the abandonment, or from the date of the declaration mentioned in Article 803.

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TITLE IV.

RISKS, DAMAGES, AND ACCIDENTS OF MARITIME COMMERCE.

SECTION FIRST.

Averages.

ART. 806. For the purposes of this code the following shall be considered averages:

1. All extraordinary or accidental expenses which may be incurred during the navigation for the preservation of the vessel or cargo, or both.

2. All damages or deterioration the vessel may suffer from the time she puts to sea from the port of departure until she casts anchor in the port of destination, and those suffered by the merchandise from the time it is loaded in the port of shipment until it is unloaded in the port of consignment.

ART. 807. The petty and ordinary expenses of navigation, such as pilotage of coasts and ports, lighterage and towage, anchorage dues, inspection, health, quarantine, lazaretto, and other so-called port expenses, costs of barges, and unloading, until the merchandise is placed on the wharf, and any other expenses common to navigation shall be considered ordinary expenses to be defrayed by the shipowner, unless there is a special agreement to the contrary.

ART. 808. Averages shall be:

1. Simple or particular.

2. General or gross.

ART. 809. Simple or particular averages shall be, as a general rule, all the expenses and damages caused to the vessel or to her cargo which have not redounded to the benefit and common profit of all the persons interested in the vessel and her cargo, and especially the following:

1. The damages suffered by the cargo from the time of its embarkation until it is unloaded, either on account of the nature of the goods or by reason of an accident at sea or force majeure, and the expenses incurred to avoid and repair the same.

2. The damages suffered by the vessel in her hull, rigging, arms, and equipment, for the same causes and reasons, from the time she put to sea from the port of departure until she anchored in the port of destination and the expenses arising therefrom.

3. The damages suffered by the merchandise loaded on deck, except in coast navigation, if the marine ordinances allow it.

4. The wages and maintenance of the crew when the vessel should be detained or embargoed by a legitimate order or force majeure, if the charter should have been for a fixed sum for the voyage.

5. The necessary expenses on arrival at a port, in order to make repairs or secure provisions.

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6. The lowest value of the goods sold by the captain in arrivals under stress for the payment of provisions and in order to save the crew, or to cover any other requirement of the vessel against which the proper amount shall be charged.

7. The victuals and wages of the crew during the time the vessel is in quarantine.

8. The damage suffered by the vessel or cargo by reason of an impact or collision with another, if it were accidental and unavoidable. If the accident should occur through the fault or negligence of the captain, the latter shall be liable for all the damage caused.

9. Any damage suffered by the cargo through the faults, negligence, or barratry of the captain or of the crew, without prejudice to the right of the owner to recover the corresponding indemnity from the captain, the vessel, and the freight.

With regard to the contents of this article, the supreme court declared in an opinion of December 31, 1881: That there must be considered as simple or particular average all damage arising from an unforeseen accident or insuperable force majeure; and in another opinion of January 9, 1883: That when by reason of the lack of skill or negligence of the captain an accident should occur, the liability therefor can not be extended to the shipowner or agent, nor can said damage be classified as an average in the accepted meaning of this word; and said court confirms furthermore, in another opinion of January 5, 1882, the provisions contained in the second paragraph of rule 8 of the article we annotate.

ART. 810. The owner of the goods which gave rise to the expense or suffered the damage shall bear the simple or particular averages.

ART. 811. General or gross averages shall be, as a general rule, all the damages and expenses which are directly caused in order to save the vessel, her cargo, or both at the same time, from a real and known risk, and particularly the following:

1. The goods or cash invested in redemption of the vessel or cargo captured by enemies, privateers, or pirates, and the provisions, wages, and expenses of the vessel detained during the time the arrangement or redemption is taking place.

2. The goods jettisoned to lighten the vessel, even though they belong to the vessel, to the cargo, or to the crew, and the damage suffered through said act by the goods kept.

3. The cables or masts which are cut or rendered useless, the anchors and the chains which are abandoned in order to save the cargo, the vessel, or both.

4. The expenses of transferring or removing a portion of the cargo in order to lighten the vessel and place her in condition to enter a port or roadstead, and the damage resulting therefrom to the goods removed or transferred.

5. The damage suffered by the goods of the cargo through the opening made in the vessel in order to drain her and prevent her sinking.

6. The expenses caused through floating a vessel intentionally stranded for the purpose of saving her.

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7. The damage caused to the vessel which it is necessary to break open, scuttle, or smash in order to save the cargo.

8. The expenses of curing and taking care of members of the crew who may have been wounded or crippled in defending or saving the vessel.

9. The pay of any member of the crew detained as hostage by enemies, privateers, or pirates, and the necessary expenses which he may incur in his imprisonment, until he is returned to the vessel or to his domicile, should he prefer it.

10. The pay and food of the crew of a vessel chartered by the month during the time it should be embargoed or detained by force majeure or by order of the Government, or in order to repair the damage caused for the common good.

11. The loss suffered in the value of the goods sold at arrivals under stress in order to repair the vessel because of gross average.

12. The expenses of the liquidation of the average.

ART. 812. In order to satisfy the amount of the gross or general averages, all the persons having an interest in the vessel and cargo therein at the time of the occurrence of the average shall contribute.

ART. 813. In order to incur the expenses and cause the damages corresponding to gross average, a previous resolution of the captain, adopted after deliberation with the sailing master and other officers of the vessel, and with a hearing of the persons interested in the cargo who may be present, shall be required.

If the latter should object, and the captain and officers, or a majority, or the captain, if opposed to the majority, should consider certain measures necessary, they may be executed under his liability, without prejudice to the freighters exercising their rights against the captain before the judge or[1] court of competent jurisdiction, if they can prove that he acted with malice, lack of skill, or negligence.

If the persons interested in the cargo, being on the vessel, should not be heard, they shall not contribute to the gross average, which contribution shall be paid by the captain, unless the urgency of the case should be such that the time necessary for previous deliberation was lacking.

ART. 814. The resolution adopted to cause the damages which constitute a general average must necessarily be entered in the log book, stating the motives and reasons therefor, the votes against it, and the reasons for the disagreement should there be any, and the irresistible and urgent causes which moved the captain if he acted of his own accord.

In the first case the minutes shall be signed by all the persons present who could do so before taking action if possible, and if not at the first opportunity; in the second case by the captain and by the officers of the vessel.

[1] In the edition amended for the Philippines the words *judge or* are suppressed.

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In the minutes and after the resolution there shall be stated in detail all the goods cast away, and mention shall be made of the injuries caused to those kept on board. The captain shall be obliged to deliver one copy of these minutes to the maritime judicial authority of the first port he may make within twenty-four hours after his arrival, and to ratify it immediately by an oath.

Articles 2173 and 2174 of the law of civil procedure for the Peninsula, 2134 and 2135 of that for Cuba and Porto Rico, and 2094 and 2095 of that for the Philippines, refer to this article.

The amount of the gross average due the vessel in the last voyage shall have preference over the marine mortgage when the following circumstances are present:

1. That the proceedings have been in accordance with the provisions of the article we annotate and those of article 33 of the said marine mortgage law.

2. That the expenses incurred and the damages caused correspond to gross average.

3. That the proof of the average was always given before a Spanish judicial authority, if the port of arrival or of unloading should be Spanish; and if it were in a foreign country, before the consular authority, and should there not be one, before the local authority. The result shall be entered in the certificate of registry of ownership, which the captain must carry.

4. That the liquidation of the average took place in accordance with the provisions of the code of commerce, the result thereof being entered in the same manner.

If the liquidation should take place in the Spanish port of the domicile of the maker of the loan, the latter shall be cited in order to be present when the average is liquidated; but his right shall be limited in this case to making his protest should the proceedings not have been in accordance to law, in his judgment. Should he not make any protest whatsoever, it shall be understood that he consents to the liquidation of the average and he shall lose all rights to impugn it.

The provisional entry of the proof of the average, as well as the provisional entry of its liquidation, shall have all the effects with regard to preference during the time the vessel does not return to the port of departure, all the provisions contained in article 33 of the marine mortgage law in its third and fourth paragraphs (article 34 of the same) being applicable.

ART. 815. The captain shall supervise the jettison, and shall order the goods cast overboard in the following order:

1. Those which are on deck, beginning with those which embarrass the handling of the vessel or damage her, preferring, if possible, the heaviest ones and those of least utility and value.

2. Those in the hold, always beginning with those of the greatest weight and smallest value, to the amount and number absolutely indispensable.

ART. 816. In order that the goods jettisoned may be included in the gross average and be entitled to indemnity, it shall be necessary in so far as the cargo is concerned that their existence on board be proven by means of the bill of lading; and with regard to those belonging to the vessel, by means of the inventory made up before the departure, in accordance with the first paragraph of article 612.

ART. 817. If in lightening a vessel on account of a storm, in order to facilitate her entry into a port or roadstead, part of her cargo should be transferred to lighters or barges and be lost, the owner of said part

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shall be entitled to indemnity, and the loss shall be considered as gross average, the amount thereof being distributed between the vessel and cargo in question.

If, on the contrary, the merchandise transferred should be saved and the vessel lost, no liability can be demanded of the salvage.

ART. 818. If, as a necessary measure to extinguish a fire in a port, roadstead, creek, or bay, it should be decided to sink a vessel, this loss shall be considered gross average, to which the vessel saved shall contribute.

SECTION SECOND.

Arrivals under stress.

ART. 819. If the captain during the navigation should believe that the vessel can not continue the voyage to the port of destination on account of the lack of provisions, sufficient reasons to fear seizure, privateers or pirates, or by reason of any accident of the sea disabling her to navigate, he shall assemble the officers and shall call the persons interested in the cargo who may be present, and who may attend the meeting without the right to vote; and if, after examining the circumstances of the case, the reasons should be considered well founded, it shall be decided to make the nearest and most convenient port, drafting and entering in the log book the proper minutes, which shall be signed by all.

The captain shall have the deciding vote and the persons interested in the cargo may make the objections and protests they may deem proper, which shall be entered in the minutes in order that they may make use thereof in the manner they may consider advisable.

ART. 820. The arrival under stress shall not be considered legal in the following cases:

1. If the lack of provisions should have been caused by reason of not having laid in the provisions necessary for the voyage, according to usage and custom, or if they should have been rendered useless or lost through bad stowage or negligence in their care.

2. If the risk of enemies, privateers, or pirates should not have been well known, manifest, and based on positive and justifiable facts.

3. If the injury to the vessel should have been caused by reason of her not being repaired, rigged, equipped, and arranged in a convenient manner for the voyage, or by reason of some imprudent order of the captain.

4. Whenever malice, negligence, want of foresight, or lack of skill on the part of the captain is the reason for the act causing the damage.

ART. 821. The expenses caused by the arrival under stress shall always be for the account of the shipowner or agent, but the latter shall not be liable for the damage which may be caused the shippers by reason of the arrival under stress, provided the latter is legitimate.

Otherwise, the shipowner or agent and the captain shall be jointly liable.

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ART. 822. In order to make repairs to the vessel or because there should be danger of the cargo suffering damage, it should be necessary to unload, the captain must request authorization of the judge or court of competent jurisdiction to lighten the vessel, and do so with the knowledge of the person interested or representative of the cargo, should there be one.

In a foreign port, it shall be the duty of the Spanish consul, where there is one, to give the authorization.

In the first case, the expenses shall be defrayed by the ship agent or owner, and in the second, they shall be for the account of the owners of the merchandise, for whose benefit the act took place.

If the unloading should take place for both reasons, the expenses shall be defrayed in proportion to the value of the vessel and that of the cargo.

Articles 2147 et seq. of the law of civil procedure in force in the Peninsula, 2108 of that for Cuba and Porto Rico, and 2068 et seq. of that for the Philippines are applicable to the article we annotate in so far as the mode of procedure is concerned.

See also articles 683 and 688 of this Code.

ART. 823. The care and preservation of the cargo which has been unloaded shall be in charge of the captain, who shall be responsible for the same, except in cases of force majeure.

ART. 824. If the entire cargo or part thereof should appear to be damaged, or there should be imminent danger of its being damaged, the captain may request of the judge or court of competent jurisdiction or the consul, in a proper case, the sale of all or of part of the former, and the person taking cognizance of the matter shall authorize it after an examination and declaration of experts, advertisements, and other formalities required by the case and an entry in the book, in accordance with the provisions of article 624.

The captain shall, in a proper case, justify the legality of the procedure, under the penalty of answering to the shipper for the price the merchandise would have brought if it should have arrived at the port of its destination in good condition.

Rules 1 and 3 of article 2161 of the law of civil procedure for the Peninsula, 2122 of that amended for Cuba and Porto Rico, and 2082 of that for the Philippines are applicable to the contents of this article.

ART. 825. The captain shall answer for the damages caused by his delay, if, the reason for the arrival under stress discontinuing, he should not continue the voyage.

If the reason for said arrival should have been the fear of enemies, privateers, or pirates, before sailing, a discussion and resolution of a meeting of the officers of the vessel and persons interested in the cargo who may be present shall take place, in accordance with the provisions contained in article 819.

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SECTION THIRD.

Collisions.

ART. 826. If a vessel should collide with another through the fault, negligence, or lack of skill of the captain, sailing master, or any other member of the complement, the owner of the vessel at fault shall indemnify the loss and damage suffered, after an expert appraisal.

ART. 827. If both vessels may be blamed for the collision, each one shall be liable for his own damages, and both shall be jointly responsible for the loss and damage suffered by their cargoes.

ART. 828. The provisions of the foregoing article are applicable to the case in which it can not be decided which of the two vessels was the cause of the collision.

ART. 829. In the cases above mentioned the civil action of the owner against the person liable for the damage is reserved, as well as the criminal liabilities which may be proper.

ART. 830. If a vessel should collide with another by reason of an accident or through force majeure, each vessel and her cargo shall be liable for their own damage.

ART. 831. If a vessel should be forced to collide with another one through a third vessel, the owner of the third vessel shall indemnify for the loss and damage caused, the captain thereof being civilly liable to said owner.

ART. 832. If, by reason of a storm or other force majeure, a vessel which is properly anchored and moored should collide with those in her immediate vicinity, causing them damage, the damage occasioned shall be looked upon as particular average to the vessel run into.

ART. 833. A vessel shall be considered as lost which, upon being run into sinks immediately, and also any vessel which is obliged to make a port to repair the damages caused by the collision should be lost during the voyage, or should be obliged to be stranded in order to be saved.

ART. 834. If the vessels colliding should have pilots on board discharging their duties at the time of the collision, their presence shall not exempt the captain from the liabilities they incur; but the latter shall have the right to be indemnified by the pilots without prejudice to the criminal liability the latter may incur.

See the royal order of March 11, 1886, which regulates the pilotage service and entrance into the Association of Pilots.

ART. 835. The action for the recovery of loss and damage arising from collisions can not be admitted if a sworn statement or declaration is not presented within twenty-four hours to the competent authority of the point where the collision took place, or that of the first port of arrival of the vessel, if in Spain,[1] and to the consul of Spain if it should have occurred in a foreign country.

[1] In the edition amended for the Philippines, instead of *if in Spain* there is stated *if in Spanish territory.*

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The fundamental reason for this article is that of preventing ficticious collisions and improper indemnities, but never to interfere with the right of the person injured by reason of an obvious act, provided the latter is made to appear in the manner prescribed in the article we annotate. (Opinion of October 13, 1890.—*Gacetas* of October 30 and November 6.)

ART. 836. In so far as the damages caused to persons or to the cargo are concerned, the absence of a sworn statement can not prejudice the persons interested who were not on board or were not in a condition to make known their wishes.

ART. 837. The civil liability contracted by the shipowners in the cases prescribed in this section, shall be understood as limited to the value of the vessel with all her equipment and all the freight money earned during the voyage.

ART. 838. When the value of the vessel and her equipment should not be sufficient to cover all the liabilities, the indemnity due by reason of the death or injury of persons shall have preference.

ART. 839. If the collision should occur between Spanish vessels in foreign waters, or if it should take place in open waters, and the vessels should make a foreign port, the Spanish consul in said port shall hold a preliminary investigation of the accident, forwarding the proceedings to the captain-general of the nearest department for continuation and conclusion.

SECTION FOURTH.

Shipwrecks.

ART. 840. The losses and damages suffered by a vessel and her cargo by reason of shipwreck or stranding shall be individually for the account of the owners, the part of the wreck which may be saved belonging to them in the same proportion.

ART. 841. If the wreck or stranding should arise through the malice, negligence, or lack of skill of the captain, or because the vessel put to sea insufficiently repaired and supplied, the owner or the freighters may demand indemnity of the captain for the damages caused to the vessel or cargo by the accident, in accordance with the provisions contained in articles 610, 612, 614, and 621.

ART. 842. The goods saved from the wreck shall be specially liable for the payment of the expenses of the respective salvage, and the amount thereof must be paid by the owners of the former before they are delivered to them, and with preference to any other obligation, if the merchandise should be sold.

In so far as the proceedings to be observed for the alienation of goods saved from a wreck are concerned, see articles 2161 et seq. of the law of civil procedure for the Peninsula, 2122 of that amended for Cuba and Porto Rico, and 2082 of that for the Philippines.

ART. 843. If several vessels navigate in consort, and any of them should be wrecked, the cargo saved shall be distributed among the rest in the proportion to the amount each one can receive.

If any captain should refuse, without sufficient cause, to receive what may correspond to him, the captain of the wrecked vessel shall enter

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a complaint against him before two sea officials to recover loss and damages resulting therefrom, ratifying the complaint within twenty-four hours after arrival at the first port, and including it in the proceedings he must institute in accordance with the provisions contained in article 612.

Should it not be possible to transfer to the other vessels the entire cargo of the one wrecked, the goods of the highest value and smallest volume shall be saved first, the designation thereof being made by the captain, in concurrence with the officers of his vessel.

ART. 844. A captain who may have taken on board the goods saved from the wreck shall continue his course to the port of destination, and on arrival shall deposit the same, with judicial intervention, at the disposal of their legitimate owners.

In case of changing his course, should he be able to unload them at the port to which they were consigned, the captain may make said port if the shippers or supercargoes present consent thereto, as well as the officers and passengers of the vessel; but he can not do so, even with said consent, in time of war or when the port is difficult to make and dangerous.

All the expenses of this arrival shall be defrayed by the owners of the cargo, as well as the payment of the freights, which, taking into consideration the circumstances of the case, are fixed by agreement or by a judicial decision.

See articles 2119 et seq. of the Law of Civil Procedure for the Peninsula, 2080 of that in force in Cuba and Porto Rico, and 2040 of that for the Philippines.

ART. 845. If there should not be on the vessel any person interested in the cargo to pay the expenses and freights corresponding to the salvage, the judge or court of competent jurisdiction may order the sale of the part necessary to cover the same. This shall also be done when its preservation is dangerous, or when in the period of one year it should not have been possible to ascertain who are its legitimate owners.

In both cases the proceedings regarding publicity and formalities prescribed in article 579 shall be observed, and the net proceeds of the sale shall be deposited in a safe place, in the judgment of the judge or court, in order to be turned over to the legitimate owners thereof.

See the article referred to and article 2621 of the Law of Civil Procedure for the Peninsula, 2122 of that amended for Cuba and Porto Rico, and 2082 of that for the Philippines.

TITLE V.

PROOF AND LIQUIDATION OF AVERAGES.

SECTION FIRST.

Provisions common to all kinds of averages.

ART. 846. The persons interested in the proof and liquidation of averages may mutually agree and bind themselves at any time with regard to the liability, liquidation, and payment thereof.

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In the absence of agreements, the following rules shall be observed:

1. The proof of the average shall take place in the port where the repairs are made, should any be necessary, or in the port of unloading.

2. The liquidation shall take place in the port of unloading should it be a Spanish port.

3. Should the average have occurred outside of the waters under the jurisdiction of Spain[1] or the cargo should have been sold in a foreign port by reason of an arrival under stress, the liquidations shall be made in the port of arrival.

4. If the average should have occurred near the port of destination, so that said port can be made, the proceedings treated of in rules 1 and 2 shall be held there.

With regard to the provisions contained in the first rule of this article, there was stated in an opinion of June 30, 1874, that by "port of unloading" is understood the port for which the vessel is bound as the termination of her voyage, where said voyage ends, and where she completes unloading, even through the vessel should carry freight for different ports in transit.

See article 869 of this code and articles 2131 et seq. of the law of civil procedure.

ART. 846. (Cuba, Porto Rico, and the Philippines.) See the note to the text of this article for the Peninsula.

ART. 847. In case of making the liquidation of the averages privately by virtue of agreement, as well as when a judicial authority takes part therein at the request of any of the parties interested who do not agree thereto, all of them shall be cited and heard, should they not have renounced this right.

Should they not be present or not have a legitimate representative, the liquidation shall be made by the consul in a foreign port, and where there is none, by the judge or court of competent jurisdiction, according to the laws of the country, and for the account of the proper person.

When the representative is a person well known in the place where the liquidation takes place, his intervention shall be admitted and produce legal effects, even though he be authorized only by a letter of the shipowner, freighter, or underwriter.

ART. 848. Claims for averages shall not be admitted if they do not exceed 5 per cent of the interest which the claimant may have in the vessel or cargo if it is gross average, and 1 per cent of the goods averaged if particular average, deducting in both cases the expenses of appraisal, unless there is an agreement to the contrary.

ART. 849. The damages, averages, loans on bottomry and respondentia, and their premiums, and any other losses, shall not earn interest by reason of delay until the period of three days has elapsed, to be counted from the day on which the liquidation may have been concluded and communicated to the persons interested in the vessel, in the cargo, or in both at the same time.

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[1] In the same article amended for the Philippines the word *Spain* is substituted by *the Philippines*. In this case it should also be substituted by *Cuba* or *Porto Rico*.

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ART. 850. If by reason of one or more accidents of the sea particular and gross averages of the vessel or the cargo, or of both, should take place on the same voyage, the expenses and damages corresponding to each one shall be determined separately in the port where the repairs are made or where the cargo is discharged, or sold, or the merchandise is benefited.

For this purpose the captains shall be obliged to demand of the expert appraisers and of the artisans making the repairs, as well as of those appraising and taking part in the unloading, repair, sale, or the benefiting of the merchandise, that they separate and detail exactly in their appraisements or estimates and accounts all the expenses and damages belonging to each average, and in those of each average those corresponding to the vessel and to the cargo, stating also separately whether there are or not any damages proceeding from the nature of the goods, and not by reason of a sea accident; and in case there should be expenses common to the different averages and to the vessel and her cargo, there must be calculated the amount corresponding to each and stated distinctly.

SECTION SECOND.

Liquidation of gross averages.

ART. 851. At the instance of the captain, the adjustment, liquidation, and distribution of gross averages shall be held privately, with the consent of all the parties in interest.

For this purpose, within forty-eight hours following the arrival of the vessel at the port, the captain shall call all the persons interested, in order that they may decide as to whether the liquidation of the gross average is to be made by experts and liquidators appointed by themselves, in which case this shall be done should the persons interested agree.

Should an agreement not be possible, the captain shall apply to the judge or court of competent jurisdiction, who shall be the one of the port where these proceedings are to be held in accordance with the provisions of this code, or to the consul of Spain, should there be one, and otherwise to the local authority when they are to be held in a foreign port.

When the judicial liquidation mentioned in this article is proper, the provisions of articles 2131 et seq. of the law of civil procedure for the Peninsula, 2096 of that for Cuba and Porto Rico, and 2052 of that for the Philippines, shall be observed.

ART. 852. If the captain should not comply with the provisions contained in the foregoing article, the shipowner or agent or the freighters shall demand the liquidation, without prejudice to the action they may bring in order to recover indemnity.

ART. 853. After the experts have been appointed by the persons interested, or by the judge or[1] court, before the acceptance, an exami-

[1] The words *judge or* do not exist in the article amended for the Philippine Islands.

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nation of the vessel and of the repairs required shall be made, as well as an estimate of their cost, separating these losses and damages from those arising from the character of the goods.

The experts shall also declare whether the repairs can be made immediately, or whether it is necessary to unload the vessel to examine and repair her.

With regard to the merchandise, if the average should be visible to the eye, the examination thereof must be made before it is delivered. Should it not be seen at the time of unloading, said examination may be held after the delivery, provided it is done in forty-eight hours from the unloading and without prejudice to the other proofs which the experts may deem necessary.

The provisions contained in articles 2134 et seq. of the law of civil procedure are applicable to the article we annotate, with the limitations contained in article 869.

ART. 854. The appraisement of the goods which are to contribute to the gross average, and that of those which constitute the average, shall conform to the following rules:

1. The merchandise saved which is to contribute to the payment of the gross average shall be valued at the current price thereof at the port of unloading, deducting the freights, customs duties, and charges for unloading, as may appear from a material inspection of the same, not taking into consideration the bills of lading, unless there is an agreement to the contrary.

2. If the liquidation is to take place in the port of sailing, the value of the merchandise loaded shall be fixed by the purchase-price, including the expenses until they are put on board, excluding the insurance premium.

3. If the merchandise should be damaged, it shall be appraised at its true value.

4. If the voyage should be interrupted, the merchandise having been sold in a foreign port and the average can not be estimated, there shall be taken as the contributing capital the value of the merchandise in the port of arrival, or the net proceeds obtained at the sale thereof.

5. Merchandise lost, which should constitute the gross average, shall be appraised at the value merchandise of its kind may have in the port of unloading, provided its kind and quality appears in the bill of lading; and should this not be the case, the invoices of the purchase issued in the port of shipment shall be taken as a basis, adding to its value the expenses and freights subsequently arising.

6. The masts cut down, the sails, cables, and other equipment of the vessel rendered useless for the purpose of saving her, shall be appraised at the current value, deducting one-third by reason of the difference between new and old.

This deduction shall not be made in regard to anchors and chains.

7. The vessel shall be appraised at her real value in her condition at the time.

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8. The freights shall represent 50 per cent by way of contributing capital.

ART. 855. The merchandise loaded on the upper deck of the vessel shall contribute to the gross average should it be saved; but there shall be no right to indemnity if it should be lost by reason of being jettisoned for the general safety, except when the marine ordinances allow its shipment in this manner in coast navigation.

The same shall take place with that which is on board and is not included in the bills of lading or inventories, according to the cases.

In any case the ship owner and the captain shall be liable to the freighters for the loss of the jettison, if the stowage on the upper deck took place without the consent of the latter.

ART. 856. Provisions and munitions of war which the vessel may have on board shall not contribute to the gross average, nor the clothing used by the captain, officers, and crew.

There shall also be excepted the clothing used by the freighters, supercargoes, and passengers who may be on board at the time of the jettison.

The goods jettisoned shall contribute to the payment of the gross averages which may occur to those saved in a different and subsequent risk.

ART. 857. After the appraisement of the goods saved has been concluded by the experts, as well as that of the goods lost which constitute the gross average, and after the repairs have been made to the vessel, should any have to be made, and in such case after the approval of the accounts of the same by the persons interested or by the judge or[1] court, the entire record shall be turned over to the liquidator appointed, in order that he may proceed with the distribution of the average.

The provisions of articles 2142 and 2143 of the law of civil procedure are applicable to the contents of this article.

ART. 858. In order to effect the liquidation the liquidator shall examine the sworn statement of the captain, comparing it, if necessary, with the log book and all the contracts which may have been made between the persons interested in the average, the appraisements, expert examinations, and accounts of repairs made. If, as a result of this examination, he should find any defect in this procedure which might damage the rights of the persons interested or affect the liability of the captain, he shall call attention thereto in order that it be corrected, if possible, and otherwise he shall include it in the preliminaries of the liquidation.

Immediately thereafter he shall proceed with the distribution of the amount of the average, for which purpose he shall fix—

1. The contributing capital, which he shall determine by the value of the cargo, in accordance with the rules established in article 854.

[1] In the same article for the Philippines the words *judge or* have been omitted.

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2. That of the vessel in her actual condition, according to a statement of experts.

3. The 50 per cent of the amount of the freight, reserving the remaining 50 per cent for pay and sustenance of the crew.

After the amount of the gross average has been determined in accordance with the provisions of this code, it shall be distributed pro rata among the goods which are to cover the same.

ART. 859. The underwriters of the vessel, of the freight, and of the cargo shall be obliged to pay for the indemnity of the gross average in so far as is required of each one of these objects respectively.

ART. 860. If, notwithstanding the jettison of the merchandise, breakage of masts, ropes, and equipment, the vessel should be lost running said risk, no contribution whatsoever by reason of gross average shall be proper.

The owners of the goods saved shall not be liable for the indemnity of those jettisoned, lost, or damaged.

ART. 861. If, after the vessel having been saved from the risk which gave rise to the jettison, she should be lost through another accident taking place during the voyage, the goods saved and existing from the first risk shall continue liable to contribution by reason of the gross average according to their value in their condition at the time, deducting the expenses incurred in saving them.

ART. 862. If, notwithstanding the saving of the vessel and of her cargo in consequence of the cutting down of masts or of any other damage deliberately done to the vessel for said purpose, the merchandise should subsequently be lost or stolen, the captain can not demand of the shippers or consignees that they contribute to idemnity for the average unless the loss should occur by an act of the owner or consignee.

ART. 863. If the owner of the jettisoned goods should recover them after having received the indemnity for gross average, he shall be obliged to return to the captain and to the other persons interested in the cargo the amount he may have received, less the damage caused by the jettison and the expenses incurred in their recovery.

In the latter case, the amount returned shall be distributed between the vessel and the persons interested in the cargo in the same proportion in which they contributed to the payment of the average.

ART. 864. If the owner of the goods jettisoned should recover them without having demanded any indemnity he shall not be obliged to contribute to the payment of the gross average which may have been suffered by the rest of the cargo after the jettison.

ART. 865. The distribution of the gross average shall not be final until it has been agréed to, or in the absence thereof, until it has been approved by the judge or court[1] after an examination of the liquidation and a hearing of the persons interested who may be present, or of their representatives.

[1] *Civil court* says the same article amended for the Philippines.

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ART. 866. After the liquidation has been approved it shall be the duty of the captain to collect the amount of the distribution, and he shall be liable to the owners of the goods averaged for the losses they may suffer through his delay or negligence.

See articles 2144 and 2145 of the law of civil procedure.

ART. 867. If the contributors should not pay the amount of the assessment within the third day after having been requested to do so, the goods saved shall be attached, at the request of the captain, and shall be sold to cover the payment.

ART. 868. If the persons interested in receiving the goods saved should not give security sufficient to answer for the amount corresponding to the gross average, the captain may defer the delivery thereof until payment has been made.

SECTION THIRD.

Liquidation of ordinary averages.

ART. 869. The experts which the judge or[1] court or the persons interested may appoint, according to the cases, shall proceed with the appraisement and examination of the averages in the manner prescribed in article 853 and in article 854, rules 2 to 7, in so far as they are applicable.

[1] The words *judge or* do not exist in the same article amended for the Philippines.

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BOOK FOURTH.—SUSPENSION OF PAYMENTS, BANKRUPTCIES, AND PRESCRIPTIONS.

TITLE I.—*Suspension of payments and bankruptcies in general.*[1]

SECTION FIRST.[2]

Suspension of payments and its effects.[3]

ART. 870. A merchant who, possessing sufficient property to cover all his debts, foresees the impossibility of meeting them when they respectively fall due, may suspend payments, which shall be declared by the judge of first instance of his domicile in view of his declaration.[4]

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[1] The code of commerce is the general law for the entire Monarchy and the special prescriptions of the Catalonian law treating of bankruptcies do not conflict with its application. (Opinion of December 27, 1888.)

[2] The amendment introduced in the four articles of which this section is composed, by the law of June 10, 1897, was extended without making any changes whatsoever in the drafting thereof, to the islands of Cuba, Porto Rico, and the Philippines, by a royal decree of the Colonial Department of June 25, 1897. (*Gaceta* of the 27th.)

[3] The four articles which compose this section have been amended, some radically, just as we insert them, by the law of June 10, 1897. Although the amendment is limited to the suspension of payments, it is not thereby rendered less worthy of applause, nor do those who procured it with such laudable perseverance deserve less gratitude.

The reasons which gave rise thereto, and which urgently demanded it, are included in the preamble of the project of law, submitted to the Cortes by the Secretary of Grace and Justice on April 25, 1892, and more laconically, although with perfect lucidity, in the report which, on May 21, 1894, was submitted by the commission appointed by Congress to make a report on the law relating to the suspension of payments and bankruptcies, submitted by the well-known jurist and deputy, Sr. Lastres, and which is as follows:

"To Congress: Few amendments appear to be demanded with such unanimous urgency as that of articles 870 to 873 of the code of commerce, which permit a measure, which the legislator intended for very different purposes, to be converted into proceedings for the discharge and reduction of credits. There is no doubt, although it may be denied by the rigor of some legislations, that before bankruptcy a merchant may be in an intermediate condition, in which, without enjoying his full credit, he is not in a situation to suspend the payment of his obligations in full. Acknowledging this transitory situation, articles 870 to 873 of the code of commerce were drafted originally, because neither the project of 1882 nor the report of Congress of the same date authorized anything but an extension, a postponement, for the full payment of the debts.

"The parliamentary initiative modified the text above mentioned; and what should have been only a transitory remedy to secure an extension was converted into a measure to reduce credits, the abuse thereof by merchants of bad faith reaching such a point that it was a frequent occurrence that article 870 of the code was made use of to offer 10 per cent or less for the debt, in installments, which sometimes covered ten years. It is sufficient to state this result to justify the very sufficient reasons adduced by honorable commerce to abolish a law which protects such an enormity, and that the text of 1882 be readopted, which is in accordance with the nature of the subject, and even the grammatical sense of the phrases contained therein, as an introduction to the section of the code of commerce we treat of."

[4] The previous text of this article was as follows: "Art. 870. A person who, possessing sufficient property to cover all his debts, should foresee the impossibility of meeting them when they fall due, and a person not having sufficient funds to fully pay them, may suspend payments, which shall be declared by the judge or court in view of his declaration."

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From the large amount of jurisprudence existing with relation to this section, we select and insert at the end of each article what we consider pertinent and applicable, even after the amendment, because of the general provisions of the old articles being preserved in those amended:

After the suspension of payments has been judicially declared in accordance with the provisions of this article, it is not possible in law to request, much less to obtain, a declaration of bankruptcy, except in the case of the proceedings being closed for any of the reasons mentioned in article 873 of this code. (Opinion of October 4, 1889.—*Gaceta* of the 21st.)

For the effects of cassation, a decision refusing the declaration of suspension of payments is not definite, the merchant reserving the right of declaring himself a bankrupt. (Opinion of January 30, 1889.)

In an opinion of January 4, 1891 (*Gaceta* of February 28), it was also established that, in accordance with the article we annotate, the condition of suspension of payments which a merchant may establish constitutes a right incompatible with a bankruptcy at the same time.

The declaration of the bankruptcy of an estate must not be refused when the latter suspends the payment of current obligations which have fallen due if the commerce in which the principal was engaged has been continued by the representatives of the inheritance. (Opinion of June 3, 1891. *Gacetas* of August 10 and 12.)

ART. 871. A merchant who possesses sufficient property to cover all his liabilities may also suspend payments within forty-eight hours following the falling due of an obligation which he may not have met.[1]

ART. 872. A merchant who desires to suspend payments must attach to his petition the balance of his assets and liabilities and the proposal of the extension he requests of his creditors, which can not exceed three years. If in any manner whatsoever a discharge or reduction of the credits is desired, the judge shall refuse to hear the petition for suspension of payments.[2]

The legal status established with the suspension of payments can not be changed on the petition of the creditors for the purpose of declaring a bankruptcy, except for the reason stated in the last paragraph of article 876 of the code of commerce, which is the nonpresentation of the proposition of settlement within the period fixed in article 872 of the same, and as it is not proven that the latter was not presented, therefore the contrary is deduced from the existence of the company in said condition of suspension of payments and from what has been stated by the parties, the infraction alleged in the eighth reason of the remedy in the application of the said article 876 of the said code in substituting the declaration of bankruptcy, and, therefore, the judgment ordering this must be annulled. (Opinion of July 14, 1894. *Gaceta* of November 11.)

ART. 873. The proceedings for the suspension of payments shall conform to the provisions indicated in the special law. If the exten-

[1] The previous text of this article was as follows:

"ART. 871. A merchant may also suspend payments within forty-eight hours following the falling due of an obligation which he may not have met.

"After the forty-eight hours mentioned in the foregoing paragraph have elapsed, without the privilege mentioned in the same having been made use of, he must the following day declare himself a bankrupt before the judge or court of his domicile."

[2] The previous text of this article was as follows:

"ART. 872. After the declaration of suspension of payments has been made, the merchant must present to his creditors, within a period of ten days, a proposition of settlement, the deliberation, vote, and all that concerns the same being subject to the provisions contained in the fourth section of this title, with the exception of what is stated therein with regard to the degree of the bankruptcy, which shall not be necessary."

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sion should be refused by the board, the proceedings shall be concluded.

The provisions of articles 870 to 873 shall be applicable to the suspension of payments of associations and enterprises not included in article 930.

In order that said associations not included in article 930 may declare a suspension of payments, an agreement of the members shall be indispensable, adopted at a general meeting, specially called for the purpose, within the period fixed in article 871. For the calling of the meeting the shortest possible periods shall be fixed which are allowed by the association by-laws or articles.[1]

Until a decision is adopted with regard to the adjustment a declaration of bankruptcy can not be demanded, because the proceedings for the suspension of payments create a preliminary condition, and until decided, said declaration can not be requested. (Opinion of August 25, 1887.)

After the citation of the creditors has been resolved upon and carried out in the terms requested by the debtor, the latter can not allege a nullity nor infraction of articles 873, 901, 902, and 903 when the chamber conforms its decision to the provisions contained in the first of the latter, and therefore a proposition of settlement can not be discussed, nor can the latter be impugned, but the proceedings may be concluded. (Opinion of May 7, 1899.)

With regard to the proceedings in the suspension of payments, the articles embraced in the first section, title 12, book 2, of the law of civil procedure are in force, without thereby conflicting with those included in section first. title 1, book 4, of the code of commerce; because the articles of the commercial code, in this part, do nothing more than to determine the right and conditions to exercise the same, while the laws of procedure establish the formalities to make them effective. By virtue thereof articles 1145 and 1146 of the law of procedure are violated by an opinion which does not declare the nullity of the measures which declared an agreement for a certain association compulsory, when it appears that, although the latter was notified at the request of the plaintiff of the approval of the settlement, neither did said plaintiff request it within three days following the meeting of the board at which the settlement was to be accepted, nor less was there entered in the proceedings, under pain of nullity, the statement that the settlement was obligatory and that he could not object thereto if in the proceedings or within the period fixed he should not protest against said decision. If an association having a residence abroad should be in question, and which was not present at the meeting where the settlement was approved, the resolution adopted at the same can not affect it, and should this not be understood, article 1148 of the said law of procedure would be violated.

SECTION SECOND.

General provisions regarding bankruptcies.

ART. 874. A merchant shall be considered in a state of bankruptcy who does not meet his current obligations.

A decision rendered in judgments of suspension of payments to the effect that "for the present" a declaration of bankruptcy is not proper, does not have the

[1] The previous text of this article was as follows:

"ART. 873. If the proposition of settlement should be refused, or a sufficient number of voters should not assemble to approve the same, the proceedings shall be closed, and all the persons interested shall be at liberty to make use of their respective rights."

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character of a definite judgment for the purposes of cassation. (Ruling of December 10, 1894. *Gaceta* of March 2, 1895.)

Article 874 of the code of commerce is applicable and refers only to the condition of bankruptcy a merchant is considered to be in who does not meet his obligations, but not when a suspension of payments is in question or the approval of the draft of an agreement requested and obtained by the debtor. (Opinion of June 28, 1894. *Gaceta* of November 9.)

ART. 875. The declaration of bankruptcy shall be proper—

1. When the bankrupt requests it in person.
2. On a well-based request of a legitimate creditor.

For the declaration of bankruptcy, in the case of the first number, the provisions of article 1324 of the law of civil procedure must be borne in mind.

See also the article of the repealed code of commerce, referring to this procedure, and the third appendix at the end of this code.

ART. 876. For the declaration of bankruptcy at the instance of the creditor it shall be necessary that the request be based on a title by virtue of which an execution or writ of attachment was issued, and that the results of the attachment should not be sufficient to cover the payment.

The declaration of bankruptcy at the instance of creditors shall also be proper, who, although they have not obtained a writ of attachment, prove their credits and that the merchant has generally defaulted in the payment of his current obligations, or that he has not presented his proposition of settlement in the case of suspension of payments within the period fixed in article 872.

See the third appendix following this code.

Articles 1325, 1333, and 1334 of the law of civil procedure are applicable to the provisions of the foregoing article.

The plural *creditors* used in the second paragraph of the article we annotate does not mean that the declaration of bankruptcy must be requested by two or more creditors, but that any one of the creditors proving his credit may do so. (Opinion of November 5, 1890.)

ART. 877. In case of the flight or concealment of a merchant, together with the closing of his offices, warehouses, or dependencies, without having left any person to manage his business for him and to meet his obligations, for the declaration of bankruptcy at the instance of a creditor it shall be sufficient that the latter proves his title and proves said facts by means of a statement which he may present to the judge or court.

The judges shall furthermore officially, in case of the well-known flight or of which they have authentic information, take charge of the establishments of the said fugitive, and shall prescribe the measures required for their preservation until the creditors make use of their right with regard to the declaration of bankruptcy.

ART. 878. After the bankruptcy has been declared the bankrupt shall be disqualified to administer his property.

All his acts of ownership and administration subsequent to the period to which the effects of the bankruptcy retroact shall be null.

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ART. 879. The amounts which the bankrupt may have paid in cash, securities, or certificates of credit in the fifteen days preceding the declaration of bankruptcy by reason of direct debts and obligations, which fell due after the latter, shall be returned to the assets by the persons who received the same.

The discount of his private property made by the merchant within the same period shall be considered as a payment in advance.

With regard to the procedure see articles 1371 to 1377 of the law of civil procedure and those of the repealed code of commerce, which refer hereto and which have no equivalents in this code.

See also articles 457, 510, 908, and 909 of this code.

ART. 880. Contracts celebrated by the bankrupt within the thirty days preceding his bankruptcy shall be considered fraudulent and void with regard to his creditors, if they are of the following kinds:

1. Transfers of real estate made without consideration.

2. Constitutions of dowries made of his private property to his daughters.

3. Concessions and transfers of real estate in payment of debts not due at the time of the declaration of bankruptcy.

4. Conventional mortgages on obligations of a prior date which do not have this quality, or for loans of money or merchandise the delivery of which had not taken place at the time of contracting the obligation before a notary and the witnesses taking part therein.

5. Gifts *inter vivos*, which have not the well-known character of remunerations, which have taken place after the balance preceding the bankruptcy, if it should show liabilities greater than the assets of the bankrupt.

A contract can not be considered gratuitous nor included in number 1 of this article when it appears that in making a sale the thing and price is determined upon, taking into consideration the existing incumbrances and accepting a sum therefor. (Opinion of November 24, 1890.)

ART. 881. The following may be annulled at the instance of the creditors by proving that the bankrupt acted with the intention of defrauding them of their rights:

1. The alienation for a valuable consideration of real property made in the month preceding the declaration of the bankruptcy.

2. The creation of dowries, made within the same time, of property of the conjugal partnership in favor of the daughters or any other transfer of said property for no consideration.

3. The creation of dowries or acknowledgment of having received moneys made by a merchant spouse in favor of the other spouse in the six months preceding the bankruptcy, provided they do not consist of real property which was inherited by the latter from his or her ascendants or acquired or possessed previously by the spouse in whose favor the assignment of the dowry or receipt of moneys was made.

4. All acknowledgments of the receipt of money or of instruments as evidence of loans, which, having been made six months before the

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bankruptcy in a public instrument, are not proven as having taken place by means of a notarial statement; or if, having been made in a private instrument, they should not conform to the entries in the books of the contracting parties.

5. All contracts, obligations, and commercial transactions of the bankrupt which are not prior to the declaration of bankruptcy by ten days at least.

With regard to the contents of the fourth paragraph of the article we annotate, the supreme court established, in an opinion of December 7, 1866, that in order that the acknowledgment of money received as a loan may be annulled, and which appears in a public instrument, six months before the bankruptcy of the debtor, without the certification as to delivery of the notary, it shall be necessary to prove that it was made in order to defraud the creditors.

ART. 882. Any gift or contract made in the two years preceding the bankruptcy may be revoked at the instance of the creditors if it should be proven that any supposition or simulation has been made to defraud the former.

ART. 883. In virtue of the declaration of bankruptcy, the pending debts of the bankrupt shall be considered as falling due on the date of the same.

If the payment should be made before the time fixed in the obligation, it shall be made with the proper discount.

ART. 884. From the date of the declaration of bankruptcy all the debts of the bankrupt shall cease to earn interest, with the exception of the mortgage and pledge credits, in so far as covered by the respective guaranty.

ART. 885. A merchant who obtains the revocation of the declaration of bankruptcy requested by his creditors may bring an action for loss and damage against the latter, if it took place with manifest malice, falsity, or injustice.

Articles 1326 et seq. of the law of civil procedure in relation with articles 1028 to 1033 of the repealed code of commerce are a complement to this article in so far as the procedure is concerned.

Neither article 885 of the code of commerce nor articles 1308, 1309, and 1310 of the law of civil procedure for the Philippines refuse creditors the right to object to the declaration of bankruptcy, although the former, under the supposition that the debtor has made use thereof, only establishes the liability contracted by the creditors who may have obtained said declaration with manifest malice, falsity, or injustice, and the remaining ones determine the procedure to be observed with regard to the objections made by the said debtor, without treating, in this regard, of the legitimate creditors, to whom the said law of procedure in its article 1152 grants this privilege in meetings of creditors; therefore, as there does not exist any reason whatsoever which justifies such a difference between both universal judgments, and as it is prescribed in article 1301 that in all that is not foreseen and ordered in the code of commerce and in the title with relation to the mode of procedure in bankruptcies the provisions prescribed in the foregoing title for meetings of creditors be observed, which provisions are considered as supplementary, it is obvious that creditors in a judgment of bankruptcy have the same right, provided they make use thereof within the periods established in article 1153. (Opinion of November 8, 1895. *Gacetas* of December 2 and 3.)

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SECTION THIRD.

Kinds of bankruptcies and parties thereto.

ART. 886. For legal purposes three different kinds of bankruptcies shall be distinguished, viz:

1. Accidental insolvency.
2. Culpable insolvency.
3. Fraudulent insolvency.

ART. 887. An accidental bankruptcy shall be considered that of a merchant who is the victim of misfortunes which, having to be considered accidental in the regular and prudent order of a good commercial administration, reduce his capital to such a point that he can not meet his debts in full or in part.

ART. 888. A culpable bankruptcy shall be considered that of merchants who are embraced in any of the following cases:

1. If the household and personal expenses of the bankrupt should have been excessive and not in proportion with his net profits, taking into consideration the circumstances of his standing and family.

2. If he should have suffered losses at any kind of play which exceed that which a diligent father of a family should risk in this kind of entertainments.

3. If the losses should have occurred by reason of imprudent wagers and involving large amounts, or from sales or purchases or other transactions, the purpose of which should be to delay the bankruptcy.

4. If in the six months preceding the declaration of bankruptcy he should have sold at a loss or for less than their current price goods bought on credit and which were not as yet paid for.

5. If it should appear in the period which has elapsed from the last inventory until the declaration of the bankruptcy that there was a time when the bankrupt owed, by reason of direct obligations, double the amount of the net credit appearing in the inventory.

The five cases of culpable bankruptcy referred to in this article are punished in article 538 of the penal code for the Peninsula, and in articles 548 of that for Cuba and Porto Rico and 525 of that for the Philippines.

ART. 889. The following shall also be considered culpable bankrupts in law, reserving the exceptions they may propose and prove in order to prove the innocence of the bankruptcy:

1. Those who have not kept their books of accounts in the manner and with all the essential and indispensable requisites prescribed in title 3 of Book I, and those who, even though they keep said books with all these conditions, should have made errors in the same which may have caused losses to a third person.

2. Those who have not made their declaration of bankruptcy in the period and manner prescribed in article 871.

3. Those who, having absented themselves at the time of the declaration of bankruptcy or during the progress of the suit, should not

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appear in person in the cases in which the law requires it of them, unless there is a legitimate obstacle.

See articles 33 et seq. of this code and the third appendix hereto.

ART. 890. A fraudulent bankruptcy shall be considered the one of merchants who are included in any of the following conditions:

1. Flight with all or a part of their property.

2. The inclusion in the balance, memoranda, books, or other documents relating to their business or transactions, of fictitious property, credits, debts, losses, or expenses.

3. If they have not kept books, or, if they have done so, they include therein, to the prejudice of a third person, entries not made in the proper place and at the proper time.

4. If they erase, blot, or change in any other manner the contents of the books, to the prejudice of a third person.

5. If the result or existence of the assets of their last inventory does not appear from the books, and the cash, securities, personal property, and goods of any kind whatsoever which appear or are proven to have come into the possession of the bankrupt subsequently.

6. If they do not insert in the balance any amount of cash, credits, goods, or other kinds of property or rights.

7. If they have used and applied to their own business funds or goods belonging to another which may have been left with them on deposit for administration or commission.

8. If they negotiate, without authority of the owner, drafts of another's account which are in their possession for collection, transmission, or other purpose than negotiation, should they not have forwarded the former the amount thereof.

9. If, having been commissioned to sell some goods or to negotiate credits or commercial securities, they should not have informed the owner thereof for any period of time.

10. If they falsify transfers of whatsoever kind.

11. Execute, sign, consent to, or acknowledge fictitious debts, presuming as such, unless there is proof to the contrary, all those which have no foundation or determined value.

12. If they purchase real estate, goods, or credits, placing them in the name of a third person to the prejudice of their creditors.

13. If they have advanced payments to the prejudice of their creditors.

14. If they negotiate, after the last balance, drafts drawn by them on other persons in whose hands they have no funds or open credit, or authority to do so.

15. If, the declaration of bankruptcy having been made, they should have collected and applied to their personal use money, cash, or credits from the assets or taken from the latter any of their belongings.

When the flight mentioned in No. 1 of this article should take place, together with the bankruptcy, articles 536 of the penal code for the Peninsula, 547 of that for Cuba and Porto Rico, and 539 of that for the Philippines shall be applicable.

To persons guilty of this kind of bankruptcies, without being fugitives, as mentioned in No. 1, the penalties prescribed in article 537 of the penal code for the

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Peninsula and its equivalent of those for Cuba, Porto Rico, and the Philippines shall be applicable.

Furthermore, article 539 of the said penal law is applicable to the article we annotate, as well as to the two preceding ones.

ART. 891. The bankruptcy of a merchant, whose true condition can not be seen from his books, shall be considered fraudulent unless there is proof to the contrary.

See articles 898 to 920 of this code.

ART. 892. The bankruptcy of commercial agents shall be considered fraudulent when it is proven that they made some transaction of draft or traffic for their own account in their own name or in that of another, even though the reason for the bankruptcy does not arise from said acts.

If the bankruptcy should have occurred by reason of the agent having constituted himself security for the transactions in which he took part, the bankruptcy shall be considered fraudulent, unless there is proof to the contrary.

ART. 893. Parties to fraudulent bankruptcies shall be considered:

1. Those who assist in the removal of property of the bankrupt.

2. Those who having conspired with the bankrupt to suppose credits against him, or to increase the amount of those they may actually have against securities or property, and who sustain this supposition in the proceedings of examination or classification of the credits, or at any meeting of creditors of the bankruptcy.

3. Those who in order to place themselves in preference to others to the prejudice of other creditors, by consent of the bankrupt, alter the nature or the date of the credit, even though this should be done before the declaration of bankruptcy.

4. Those who deliberately and after the bankrupt suspended payments should assist him in concealing or removing a portion of his property or credits.

5. Those who, being the holders of any property of the bankrupt at the time the declaration of bankruptcy by the judge or court taking cognizance thereof is made known, deliver it to the former and not to the legitimate administrators of the assets, unless, being a nation or province different from that of the domicile of the bankrupt, they prove that in the town of their residence the bankruptcy was unknown.

6. Those who refuse to deliver to the receivers of the bankruptcy the goods belonging to the bankrupt which may be in their possession.

7. Those who after the publication of the bankruptcy should admit indorsements of the bankrupt.

8. The legitimate creditors who, to the prejudice and in fraud of the assets, should make private or secret settlements with the bankrupt.

9. The agents who take part in a transaction of traffic or drafts which the merchant who has been declared bankrupt makes.

See the third appendix of this code.

The provisions of articles 541 of the penal code in force in the Peninsula, 552 of that for Cuba and Porto Rico, and 532 of that for the Philippines, are applicable to the last eight numbers of this article.

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ART. 894. The parties to the bankruptcies shall be condemned, without prejudice to the penalties they may incur in accordance with the criminal laws:

1. To lose any right they may have to the assets of the bankruptcies to which they are declared parties.

2. To return to the said assets the property, rights, and actions with regard to which the declaration of their complicity was rendered, with interest and indemnity for loss and damage.

ART. 895. The classification of the bankruptcy, in order to demand the criminal liability of the debtor, shall always be made in a separate proceeding, which shall be instituted with a hearing of the department of public prosecution, of the receivers and of the bankrupt himself.

The creditors shall have the right to take part in the proceedings and to bring actions against the bankrupt, but they shall do so at their own expense, without any right of action to be reimbursed from the assets for the expenses of the suit or for the costs, no matter what may be the result of their actions.

With regard to the provisions contained in the first paragraph, relating to the fact that the proceedings referring to the criminal liability shall be held with a hearing of the receivers, the provisions of articles 1382 to 1388 of the law of civil procedure, and specially the provisions of article 1387, should be taken into consideration.

ART. 896. In no case, neither at the instance of a party nor officially, shall proceedings with regard to the crimes of culpable or fraudulent bankruptcy be instituted before the judge or court has made the declaration of bankruptcy and that there are grounds to proceed criminally.

See the third appendix of this code.

ART. 897. The classification of an accidental bankruptcy by means of a final judgment shall not be an obstacle to a criminal action when, from the pending suits on settlements, admission of credits, or any other matter, there should appear to be signs of acts punishable in the penal code, which shall be brought to the knowledge of the judge or court of competent jurisdiction. In such cases the department of public prosecution must previously be heard.

SECTION FOURTH.

Settlements of bankrupts with their creditors.

ART. 898. At any stage of the proceedings, after the examination of the credits and after the classification of the bankruptcy has been made, the bankrupt and his creditors may make the settlements they may deem proper.

Fraudulent bankrupts shall not enjoy this right, nor those who flee during the proceedings in bankruptcy.

See articles 1289 et seq. of the law of civil procedure now in force.

ART. 899. The settlements between the creditors and the bankrupt must be made at a meeting of creditors duly called.

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Private adjustments between the bankrupt and any of his creditors shall be void; the creditor who makes them shall lose his right in the bankruptcy, and the bankrupt, through this act alone, shall be classified as culpable, when he does not deserve to be considered as a fraudulent bankrupt.

See articles 888 et seq. of this code.

ART. 900. The creditors specially preferred, the preferred creditors, and the mortgage creditors need not take part in the resolution of the board with regard to the adjustment, and should they not take part therein, they shall not be injured by reason thereof in their respective rights.

If, on the contrary, they should prefer to take part and vote on the settlement proposed, they shall be included in the extensions and discharges which the board may decide upon, without prejudice to the place and degree corresponding to their credit.

See article 1392 of the law of civil procedure.

ART. 901. The draft of the settlement shall be discussed and submitted to vote, the vote of a number of creditors composing one over one-half of those present being sufficient to adopt resolutions, provided their interest in the bankruptcy covers three-fifths of the total liabilities, after having deducted the amount of the credits of the creditors included in the first paragraph of the foregoing article who may have made use of the right granted them therein.

Articles 872, 873, and 901 to 903 of the code of commerce refer to the suspension of payments legally effected, and in no manner whatsoever to that effected outside of the exact conditions of law, to which they have no application at all, and are to be considered still more so when the declaration referred to is granted on the request of the person interested, without a hearing or opposition of his creditors being possible. (Opinion of June 28, 1894. *Gaceta* of November 9.)

See the article cited in the preceding note.

ART. 902. Within the eight days following the holding of the meeting at which the settlement was accepted, the dissenting creditors and those who have not taken part in the meeting may object to the approval of the same.

ART. 903. The only reasons on which the objection to the settlement may be based shall be the following:

1. Errors in the procedure prescribed for the calling, holding, and deliberations of the meeting.

2. Lack of qualifications or representation in one of the voters, if his vote decides the majority in number or amount.

3. Fraudulent understandings between the debtor and one or more creditors, or of the creditors among themselves to vote in favor of the settlement.

4. Fraudulent exaggerations of credits in order to obtain the majority in amount.

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5. Fraudulent error in the general balance of the transactions, of the bankrupt, or in the reports of the receivers, in order to facilitate the admission of the proposals of the debtor.

See in the annotation to article 901 the doctrine of the opinion of June 28, 1894.

ART. 904. After the settlement has been approved, and, with the exception of the provisions contained in article 900, it shall be binding upon the bankrupt and for all the creditors whose credits are of a date prior to the declaration of bankruptcy, should they have been cited in a legal manner, or if, having been notified of the approval of the settlement, they should not have proceeded against the latter in the manner prescribed in the law of civil procedure, even though they are not included in the balance and have not taken part in the proceedings.

The provisions of the law of civil procedure to which allusion is made in the article we annotate are those contained in articles 1393 et seq. of that for the Peninsula, 1391 of that for Cuba and Porto Rico, and 1375 of that for the Philippines.

The supreme court in an opinion of September 27, 1889, established: That it can not be said that a creditor was cited in a legal manner when, notwithstanding that his domicile appears in the instrument of credit, he is not personally cited for the meeting, in accordance with article 1133 of the law of civil procedure, nor is the right granted the debtor made use of, by article 1145 of the same, by which the settlement does not bind him, nor does the notification of the decision of approval of the agreement made extemporaneously prejudice him.

ART. 905. By virtue of the settlement, should there not be an express stipulation to the contrary, the credits shall be extinguished in the part from which the bankrupt was discharged, even though there should remain a surplus from the assets of the bankruptcy, or he should subsequently improve his fortune.

ART. 906. If the debtor with regard to whom the settlement has been drawn should not comply therewith any of his creditors may demand the rescission of the settlement and the continuation of the bankruptcy before the judge or court which may have taken cognizance thereof.

It can not be affirmed that a judgment recognizes the right alleged in applying article 906 of the code now in force to a matter prior to its date, when what is really done is to apply the old provisions, invoking said article only to strengthen the argument. (Opinion of June 6, 1895. *Gaceta* of September 11.)

A judgment rescinding a contract accepted at a meeting of creditors of an association and which declares the bankruptcy of the same does not violate the provisions of articles 872, 906, and paragraph 2 of article 876 of the code of commerce through noncompliance with a part thereof to which he was bound by the said settlement. (Opinion of October 1, 1894. *Gaceta* of November 13.)

ART. 907. In case there should not have been the special agreement mentioned in article 905 the creditors who are not fully paid with the amount they receive from the assets of the bankruptcy until the conclusion of the liquidation of the same shall preserve the right of action for the amount still due them on the property which the bankrupt may or is able to acquire subsequently.

This article is a complement to article 905 referred to. See articles 921 and 928 of this code.

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SECTION FIFTH.

Rights of creditors in cases of bankruptcy and their respective classification.

ART. 908. The merchandise, goods, and any other kind of property which may compose the assets of the bankruptcy, the ownership of which may not have been transferred to the bankrupt legally and irrevocably, shall be considered as another's property and shall be placed at the disposal of its legitimate owners after an acknowledgment of their right at a meeting of creditors or in a final judgment, the assets retaining the rights which the bankrupt may have in said property, in whose place the former shall be substituted, provided the proper obligations are complied with.

See articles 457, 510, and 879 of this code.

ART. 909. There shall be considered as included in the provisions of the foregoing article for the purposes indicated therein—

1. The unappraised and appraised dowry property which may remain in the possession of the husband if its receipt appears in a public instrument recorded in accordance with articles 21 and 27 of this code.

2. The paraphernal property which the wife may have acquired by reason of inheritance, legacy, or gift, either in the manner in which it was received or if it has been subrogated or inverted into other property, provided the inversion or subrogation was recorded in the commercial registry in accordance with the provisions contained in the articles cited in the foregoing number.

3. The property and goods the bankrupt may have on deposit, under administration, leased, rented, or of which he enjoys the usufruct.

4. The merchandise the bankrupt may have in his possession ordered to be sold, purchased, transferred, or delivered.

5. The drafts or promissory notes which without indorsement or any statement which transfers their ownership should have been sent the bankrupt for collection, and those he may have gained possession of for the account of another, drawn or indorsed directly in favor of the principal.

6. The moneys forwarded outside of account current to the bankrupt for delivery to a determined person in the name and for the account of the principal, or to satisfy obligations which are to be met in the domicile of the former.

7. The amounts which are owed the bankrupt by reason of sales made for the account of another, and the drafts or promissory notes of the same character which are in his possession, even though they are not drawn in favor of the owner of the merchandise sold, provided it is proven that the obligation arises therefrom and that they were in the possession of the bankrupt for the account of the owner in order to be cashed, and the amounts thereof to be forwarded at the proper time, which shall be legally presumed if the amount should not have been entered on account current between both.

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8. The goods sold to the bankrupt for cash, the price of which has not been paid at all or only in part, while they remain packed in the warehouses of the bankrupt or in the manner in which the delivery was made, and when they are in such condition as to be specifically distinguished by the marks and numbers of the packages or bales.

9. The merchandise which the bankrupt may have purchased on credit, until the material delivery of the same has not been made to him in his warehouses or in a place agreed upon, and that the bills of lading or shipping receipts which may have been forwarded to him, after being shipped, by order and for the account and risk of the purchaser.

In the cases of this number and of number 8 the receivers may retain the goods purchased or demand them for the assets paying the price thereof to the vendor.[1]

See articles 32 et seq. of the commercial registry regulations and the third appendix of this code.

ART. 910. There shall also be considered as included in the provisions of article 908, for the purposes determined therein, the amount of the bank notes in circulation of banks of issue, in case of the bankruptcy of these institutions.

ART. 911. From the proceeds of the property of the bankruptcy, after making the deductions prescribed in the foregoing articles, the creditors shall be paid in accordance with the provisions contained in the following articles:

See articles 926, 927, 932, and 941 of this code.

ART. 912. The graduation of the credits shall be made by dividing them into two sections. The first one shall include the credits which are to be paid from the proceeds of the personal property of the bankruptcy, and the second those which are to be paid from the proceeds of the real estate.

ART. 913. The preference of the creditors of the first section shall be established in the following order:

1. The creditors specially preferred in this order—

a. The creditors by reason of burial, funeral and probate expenses.

b. The creditors by reason of furnishing support to the bankrupt or to his family.

c. The creditors by reason of personal services, including the commercial employees, for the six months immediately preceding the bankruptcy.

2. The preferred creditors who are given a preferred right in this code.

3. The creditors preferred by common law, and the legal mortgage creditors in the cases in which, in accordance with the said law, they are preferred with regard to personal property.

[1] With regard to the modifications which are considered as advisable for this article, see the project of law published in the *Gaceta* of April 27, 1892, which we insert as an appendix.

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4. The creditors, appearing to be such by public instruments, together with those who are such by reason of commercial instruments or contracts in which an agent or broker has taken part.

5. The common creditors through commercial transactions.

6. The common creditors according to the civil law.

The preferred creditors referred to in number 2 of the article we annotate are, among others, those referred to in articles 98, 196, 276, 372, 375, 403, 580, and 791 of this code, and the mortgage creditors mentioned in number 3 are those referred to in article 168 of the mortgage law.

ART. 914. The preference to be observed in the payment of the creditors of the second section shall conform to the following order:

1. The creditors with a property right, in the terms and in the order established in the mortgage law.

2. The creditors specially preferred and the others mentioned in the foregoing article, in accordance with the order established therein.

With regard to the provisions of number 1, see articles 26, 51, and 64 of the mortgage law.

In case the owner of a vessel should be declared bankrupt, there shall be considered as included in the article we annotate the credits secured by a mortgage on the said vessel, and the others which have preference over the same in accordance with the provisions of the marine mortgage law. (Art. 51 of the same.)

ART. 915. The amounts which the legal mortgage creditors may receive from the personal property after it has been sold, shall be credited on account of what they are to receive through the sale of the real property; and should they have received the full amount of their credit, it shall be considered as canceled, and the creditors following in order of dates shall then be paid.

ART. 916. The creditors shall receive their credits without distinction as to date, pro rata within each class, and in accordance with the order indicated in articles 913 and 914.

Exceptions are:

1. The mortgage creditors, who shall collect in the order of the dates of the record of their instruments.

2. The creditors whose credits appear in public or commercial instruments, in which agents or brokers have taken part, who shall also collect in the order of the dates of their instruments.

There are reserved, notwithstanding the foregoing provisions, the preferences established on a determined article, in which case, should several creditors of the same class appear, the general rule shall be observed.

ART. 917. The proceeds of the sale shall not be distributed among the creditors of one grade, letter, or number of those designated in articles 913 and 914, unless all the credits of that grade, letter, or number of the said articles are entirely paid, according to their order of preference.

ART. 918. The creditors having a security established in a public instrument or in a certificate in which an agent or broker has taken

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part, shall not be obliged to turn into the assets the securities or objects they may have received as security, unless the receivers in bankruptcy should desire to recover the same by paying the credit in question in full.

Should the receivers not make use of this right, the creditors having security which can be quoted on exchange may sell the same when the debt falls due, in accordance with the provisions of article 323 of this code; and should the pledges be of a different kind, they may alienate them with the intervention of a licensed broker or agent, should there be any, and otherwise at a public auction held before a notary.

The surplus which there may be after the credit has been extinguished shall be turned over to the assets.

If, on the contrary, there should still remain a balance against the bankrupt, the creditor shall be considered as a creditor whose credit appears in a public instrument, in the place corresponding to him according to the date of the contract.

As an explanation of the provisions of this article, see articles 320, 324, and number 9 of article 913 of this code.

ART. 919. The mortgage creditors, either voluntary or legal, whose credits are not covered by the sale of the real estate which may have been mortgaged in their favor, shall be considered with regard to the balance as creditors whose credits appear in a public instrument, being included in the rest of this grade according to the date of their instruments.

SECTION SIXTH.

Discharge of bankrupts.[1]

ART. 920. Fraudulent bankrupts can not be discharged.

ART. 921. The bankrupts not included in the foregoing article may obtain their discharge by proving that they have fully complied with the approved adjustment they may have made with their creditors.

Should there have been no agreement, they shall be obliged to prove that all the obligations acknowledged in the bankruptcy proceedings were liquidated with the assets of the same, or through subsequent payments.[2]

See the third appendix after this code.

ART. 922. With the discharge of the bankrupt all the legal interdictions which a declaration of bankruptcy gives rise to shall cease.

SECTION SEVENTH.

General provisions regarding the bankruptcy of commercial associations in general.

ART. 923. The bankruptcy of a general or limited copartnership includes that of the members who may have a joint liability therein, in accordance with articles 127 and 148 of this code, and shall produce

[1] With regard to the discharge of bankrupts, see article 1388 of the law of civil procedure.

[2] See the note to article 909, which is also applicable to article 921.

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with regard to all of said partners the effects inherent in the declaration of bankruptcy, but the respective liquidations always being kept separated.

ART. 924. The bankruptcy of one or more partners shall not in itself produce the bankruptcy of the copartnership.

But it will produce the total dissolution of the association, in accordance with the provisions of number 3 of article 222 of this code.

ART. 925. If the partners in limited copartnerships or stockholders of corporations should not have delivered at the time of the bankruptcy the full amount they bound themselves to contribute to the association, the receiver or receivers of the bankruptcy shall have a right to demand of them the liabilities which may be necessary within the limit of their respective liability.

ART. 926. The special partners, the stockholders of corporations and those of joint-stock companies, who are at the same time creditors of the bankruptcy, shall not appear in the liabilities of the same except for the difference appearing in their favor after the amounts they were obliged to contribute as such members should be provided for.

The associations referred to in this article are those treated of in the following section of this code, and not other kinds of associations. (Opinion of May 16, 1895. *Gaceta* of August 26.)

ART. 927. In general copartnerships the private creditors of the partners whose credits should be prior to the constitution of the association shall be placed in the same category as the creditors of the latter, and in their proper place and grade, in accordance with the provisions contained in articles 913, 914, and 915 of this code.

Subsequent creditors shall only be entitled to recover their credits from the balance, should there be any, after the debts of the association have been satisfied, the preference granted by law to preferred and to mortgage credits always being reserved.

ART. 928. The settlement in cases of the bankruptcy of corporations which are not in liquidation may have for an object the continuation or the transfer of the enterprise, with the conditions fixed in the said settlement.

ART. 929. The associations shall be represented during the bankruptcy in the manner which may have been foreseen for such cases in the by-laws, and in the absence thereof, by the board of directors; and they may at any stage thereof submit to the creditors the propositions of settlement which they may consider proper, which must be decided in accordance with the provisions contained in the following section.

SECTION EIGHTH.

Suspension of payments and bankruptcy of railroad and other public-work companies or enterprises.

ART. 930. Railroad companies and others devoted to works of general, provincial, or municipal public service, which find themselves

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unable to meet their obligations, may appeal to the judge or[1] court, requesting a declaration of suspension of payments.

The declaration of suspension of payments may also be made at the instance of one or more legitimate creditors, as such being understood, for the effects of this article, those mentioned in article 876.

ART. 931. The service of the operation of railroads or any other public works can not be interrupted through any judicial or administrative action.

See section 9, title 1, book 2, and article 372 of this code.

ART. 932. The company or enterprise which desires to suspend payments requesting a settlement with its creditors must accompany their petition with the balance of the assets and liabilities.

For the effects relating to the settlement, the creditors shall be divided into three groups. The first shall include the credits for personal services and those proceeding from the exercise of the right of eminent domain, and for works and material; the second, the mortgage obligations issued for the capital which they themselves represent, and for the coupons and amortization which have fallen due and have not been paid, the coupons and amortization being computed for their full value, and the obligations according to the rate of issue, this group being divided into the number of sections equal to that of the issue of mortgage obligations; and the third, all other credits, whatever be their nature and order of preference to each other and with regard to the preceding groups.

See the provisions of article 186 with regard to the preference in the payment of the issues of these securities.

ART. 933. If the company or enterprise should not present the balance in the manner prescribed in the foregoing article, or if the declaration of suspension of payments should have been requested by creditors proving the conditions required in the second paragraph of article 930, the judge or court shall order that a balance be struck within the period of fifteen days, and if the same should elapse without the balance being presented it shall be made officially within the same period and at the expense of the debtor company or enterprise.

ART. 934. The declaration or suspension of payments made by the judge or court shall produce the following effects:

1. It shall suspend executions and judicial decrees.

2. It shall obligate the companies and enterprises to deposit in the treasury or in the banks authorized to accept the same, the surplus, after meeting the expenses of management, operation, and construction.

3. It shall oblige the companies or enterprises to present to the judge or court, within the period of four months, a proposition of settlement for the payment of the creditors, previously approved at an ordinary or extraordinary meeting of the shareholders, if the debtor company or enterprise should have been established on shares.

[1] The words *judge or* are omitted in this article amended for the Philippines.

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ART. 934. (Cuba and Porto Rico.) The declaration or suspension of payments made by the judge or court shall produce the following effects: First, it shall suspend executions and judicial decrees; second, it shall obligate the companies and enterprises to deposit in the treasury or in the banks authorized to accept the same, the surplus, after meeting the expenses of management, operation, and construction; third, it shall oblige the companies or enterprises to present to the judge or court, within the period of four months, a proposition of settlement for the payment of the creditors, previously approved at an ordinary or extraordinary meeting by the shareholders, if the debtor company or enterprise should have been established on shares.

ART. 935. The settlement shall be approved if it is accepted by those representing three-fifths of each of the groups or sections mentioned in article 932.

It shall also be considered as approved by the creditors if there should not have attended within the first period fixed for the purpose a sufficient number to make up the majority which is above referred to, and at a second call it should be accepted by the creditors who represent two-fifths of the total of the first two groups and of their sections, provided there is no objection exceeding two-fifths of any of said groups or of the total liabilities.

ART. 936. Within the fifteen days following the counting of the votes, if the result should have been favorable to the settlement, the dissenting creditors and those who may not have attended may object to the settlement by reason of defects in the call of the creditors, and in the signatures of the latter, or for any of the reasons stated in numbers 2 to 5 of article 903.

ART. 937. After the settlement has been approved without objection, or if said objection has been disallowed by a final judgment, it shall be obligatory for the company and for all the creditors whose credits are of a date prior to the suspension of payments, should they have been cited in a legal manner, or, if having been notified of the settlement they should not have objected thereto in the terms prescribed in the law of civil procedure.

Articles 1389 et seq. of the law of civil procedure for the Peninsula, 1387 of that for Cuba and Porto Rico, and 1371 of that for the Philippines, refer to settlement between creditors and bankrupts.

ART. 938. The declaration of the bankruptcy of companies or enterprises shall be proper when they request it, or at the instance of a legitimate creditor, provided any of the following conditions is proven in the latter case:

1. If four months should elapse from the declaration of suspension of payments without the proposed settlement being presented to the judge or court.

2. If the settlement should be disapproved by a final judgment or if sufficient signatures to approve it should not meet within the two periods referred to in article 935.

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3. If the settlement having been approved, it should not be complied with by the debtor company or enterprise, provided that in the latter case it is requested by creditors representing at least one-twentieth of the liabilities.

ART. 939. After the declaration of bankruptcy has been made, if the concession should still be in force, the Government or the corporation which granted it shall be informed thereof, and a board of receivers shall be established, composed of a president appointed by said authority; two members appointed by the corporation or enterprise; one for each group or section of creditors and three members selected from among the latter.

ART. 940. The board of receivers shall provisionally organize the service of the public work; it shall administer and operate it, being furthermore obliged:

1. To deposit the proceeds in the general treasury as a necessary deposit, after deducting and paying the expenses of administration and operation.

2. To deposit in the same treasury, and also as a necessary deposit, the cash on hand or securities the company or enterprise may have at the time of the receivership.

3. To exhibit the books and papers belonging to the company or enterprise when proper or when ordered to do so by the judge or court.

ART. 940. (Cuba and Porto Rico.) The board of receivers shall provisionally organize the service of the public work; it shall administer and operate it, being furthermore obliged: First, to deposit the proceeds in the general treasury or in the banks authorized to accept them, after deducting and paying the expenses of administration and operation; second, to deposit in the same place and also as a necessary deposit, the cash on hand or securities the company or enterprise may have at the time of the receivership; third, to exhibit the books and papers belonging to the company or enterprise when proper or when ordered to do so by the judge or court.

ART. 940 (Philippines). The board of receivers shall provisionally organize the service of the public work. It shall administer and operate it, being furthermore obliged—

1. To deposit the proceeds in the general treasury as a necessary deposit, after deducting and paying the expenses of administration and operation.

2. To deposit in the same treasury, and also as a necessary deposit, the cash on hand or securities the company or enterprise may have at the time of the receivership.

3. To exhibit the papers and books belonging to the company or enterprise when proper, or when ordered to do so by the court.

ART. 941. In the graduation and payment of the creditors, the provisions contained in the fifth section of this title shall be observed.

See articles 908 to 919 of this code.

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TITLE II.

Prescriptions.[1]

ART. 942. The periods fixed in this code for bringing the actions arising from commercial contracts can not be extended and are without recourse.

ART. 943. The actions which by virtue of this code do not have a fixed period in which to be brought judicially shall be governed by the provisions of the common law.

ART. 944. The prescription shall be interrupted through suit or any judicial proceeding brought against the debtor, through the acknowledgment of the obligations, or through the renewal of the instrument on which the right of the creditor is based.

The prescription shall be considered uninterrupted by a judicial proceeding if the plaintiff should discontinue it, or the case should lapse, or his objection be disallowed.

The period of the prescription shall begin to be counted again, in case of the acknowledgment of the obligations, from the day this is done; in case of their renewal, from the date of the new instrument, and if the period for meeting the obligation should have been extended, from the date this extension has fallen due.

ART. 945. The liability of exchange brokers, commercial brokers, or ship-broking interpreters in the obligations in which they take part by reason of their office shall prescribe after three years.

ART. 946. The real action against the security of agents shall only be brought within six months, counted from the date of the receipt of the public securities, commercial bonds or funds which may have been delivered to them for negotiation, with the exception of the cases of interruption or suspension mentioned in article 944.

ART. 947. The actions which may be brought by a partner against the copartnership, or vice versa, shall prescribe after three years, counted, according to the cases, from the withdrawal of the partner, his exclusion, or from the dissolution of the copartnership.

It shall be necessary, in order that this period may run, to record in the commercial registry the withdrawal of the partner, his exclusion, or the dissolution of the copartnership. The right to recover the dividends or payments which are declared by reason of profit or capital on the part or share which is due each partner in the association funds, shall prescribe after five years, counted from the day fixed to commence their collection.

ART. 948. The prescription in favor of a partner who withdrew from the copartnership or who was excluded from the same if it appears in the manner indicated in the foregoing article, shall not be interrupted

[1] Besides the periods fixed in this title for prescriptions, observe those mentioned in articles 85, 342, 475, number 7, articles 781, 793, 797, and 798 of this code.

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by the judicial proceedings instituted against the copartnership or against another partner.

The prescription in favor of the partner who was part of the copartnership at the time of its dissolution shall not be interrupted by the judicial proceedings instituted against another partner, but shall be by those instituted against the liquidators.

ART. 949. The actions against the managing and directing members of associations shall terminate at the end of four years, to be counted from the time they cease to manage the same for any reason whatsoever.

ART. 950. Actions arising from drafts shall extinguish three years after they have fallen due, should they have been protested or not.

A similar rule shall be applied to drafts and promissory notes of commerce, to checks, stubs, and other instruments of draft or exchange, and to the dividends, coupons, and the amounts of the amortization of obligations issued in accordance with this code.

ART. 951. The actions relating to the collection of transportation, freights, expenses inherent thereto, and the contributions of ordinary averages shall prescribe six months after the goods which gave rise thereto were delivered.

The right to the collection of the passage shall prescribe after a similar period, to be counted from the day the traveler arrived at his destination, or from the day he should have paid the same.

ART. 952. The following shall prescribe after one year:

1. The actions arising from services, works, provisions, and furnishing of goods or money for the construction, repair, equipment, or provisioning of vessels, or to support the crew, to be counted from the delivery of the goods and money, or from the period stipulated for their payment, and from the time the services or labor were rendered, if they should not have been engaged for a definite period or voyage. Should this be the case, the time of the prescription shall begin to be counted from the end of the voyage or from the date of the contract referring thereto, and should there be any interruption therein, from the time of the definite conclusion of the service.

2. The actions relating to the delivery of the cargo in maritime or land transportation or to the indemnity for delays and damages suffered by the goods transported, the period of the prescription to be counted from the day of the delivery of the cargo at the place of its destination, or from the day on which it should have been delivered according to the conditions of its transportation.

The actions for damages or defaults can not be brought if at the time of the delivery of the respective shipments or within the twenty-four hours following, when damages which do not appear on the exterior of the packages received are in question, the proper protests or reservations should not have been made.

3. The actions arising from expenses of the judicial sale of vessels, cargoes, or goods, transported by sea or by land, as well as those arising

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from their custody, deposit, and preservation, and the navigation and port expenses, pilotage, rescues, assistance, and salvages, the period to be counted from the time the expenses were incurred and the assistance given, or from the conclusion of the proceedings, if any should have been instituted on the case.

ART. 953. The actions to demand indemnity for collisions shall prescribe after two years from the accident.

These actions shall not be admissible if the proper statement should not have been made by the captain of the vessel damaged, or by the persons exercising his duties, at the first port which may be made, in accordance with cases 8 and 15 of article 612, when they may occur.

ART. 954. Actions arising from loans on bottomry or respondentia or from marine risks shall prescribe after three years from the period of the respective contracts or from the date of the accident which gives rise thereto.

TITLE III.

GENERAL PROVISIONS.

ART. 955. In cases of war, officially declared epidemic or revolution, the Government may, if it is resolved upon by the council of secretaries and the Cortes are informed thereof, suspend the action of the periods fixed by this code for the purposes of commercial transactions, fixing the points or places where it considers the suspension advisable, when the latter is not to be general for the whole Kingdom.

ART. 955. (Philippines.) In cases of war, officially declared epidemic, or revolution, *or geological disturbances of great consequence, the Governor-General of the Philippines may, after a resolution adopted at a meeting of authorities,* suspend the action of the periods fixed by this code for the purposes of commercial transactions, fixing the points or places where the suspension is considered advisable, when the latter is not to be general for the entire *Philippine Archipelago. The order of suspension must be communicated immediately by cable to the colonial secretary in order to be submitted to the approval of the Government. In case of the breaking or interruption of the cable, the most rapid means of communication possible shall be made use of.*

For a better understanding and application of this code there shall be considered as Spaniards all persons who, according to the constitution of the Monarchy, are thus considered.

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THE COMMERCIAL REGISTRY REGULATIONS.

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ROYAL DECREE.

Taking into consideration the reasons stated to me by the Secretary of Grace and Justice, in conformity with the opinion of the Council of Secretaries, and after hearing the Council of State,

I hereby approve the attached regulations for the organization and government of the commercial registry as provisional, which shall go into operation from January 1, 1886.

Given at the Palace on December 26, 1885.

MARIA CRISTINA,

MANUEL ALONSO MARTINEZ,
Secretary of Grace and Justice.

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PROVISIONAL REGULATIONS FOR THE ORGANIZATION AND GOVERNMENT OF THE COMMERCIAL REGISTRY.[1]

CHAPTER I.

COMMERCIAL REGISTRIES AND OFFICIALS IN CHARGE THEREOF.

ARTICLE 1. From January 1, 1886, there shall be established in each capital of a province of the Peninsula, Balearic Islands and Canaries, the commercial registry ordered to be opened by article 16 of the code of commerce and to consist of two books of merchants and associations.

The third book destined to the recording of vessels shall be established in Sevilla, in the capitals of the coast provinces which are at the same time seaports, and in the capital of the respective maritime province when the former do not include said condition.[2]

ART. 2. Until the commercial registries are established in the manner prescribed in article 32 of said code, the registers of property shall temporarily take charge of these offices, and in their absence the prosecuting attorney of the municipal court shall do so, who shall, in so far as this service is concerned, be immediately under the jurisdiction of the general direction of the civil and property registries and of notaries.

ART. 3. Should there be two or more registers of property in any capital of a province, the one designated by the direction shall discharge the duties of commercial register.

ART. 4. All the expenses necessary to keep the registries, including the books, indices, and seal, without prejudice to their remaining the property of the State, shall be defrayed by the commercial registers.

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[1] These regulations with the proper amendments, which are indicated below, were extended to the islands of Cuba and Porto Rico by a royal decree of June 12, 1886.

[2] The same article, amended for Cuba and Porto Rico, is as follows:

ARTICLE 1. From May 1, 1886, there shall be established in each of the six provinces of the island of Cuba, and in the capital and city of Ponce, in the island of Porto Rico, the commercial registry ordered to be opened by article 16 of the new code of commerce, and to consist of two books for merchants and associations.

The third book destined to the recording of vessels shall be established in Havana for that province and for the province of Pinar del Rio; in Matanzas and Santiago de Cuba for the respective provinces; in Cienfuegos for the province of Santa Clara, and in Nuevitas for that of Puerto Principe, as well as in San Juan Bautista de Puerto Rico and in Ponce for that island.

The commercial registry of the capital of Porto Rico shall include the territories of the two inferior courts of the capital and those of Arecibo, Humacao, Caguas, and Aguadilla; that established in Ponce shall include the territories of those of Ponce, Mayagüez, San Germán, and Guayama.

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CHAPTER II.

MANNER OF KEEPING THE REGISTRIES.

ART. 5. The commercial registry shall be open every day which is not a holiday for six hours, which shall be made known to the public by means of an advertisement in the official bulletin of the respective province, besides doing so on the door of the office.

ART. 6. The three books of the registry shall be kept in volumes or pamphlets composed of handmade linen paper of the second class, made in Spain, sewed with ribbon and twine, and bound in calfskin, with parchment corners, and board and black cloth covers.

The first two sheets and the last one shall be left entirely in blank. The others shall all have horizontal lines.

On the left side of each sheet there shall be left between two perpendicular lines a space of 2 centimeters for the purpose of entering therein the number of each record.

All the ruled pages shall be numbered in figures according to their order.

ART. 7. The volumes of the book of merchants shall be composed of 100 serviceable folios, those for associations of 200, and those of the registry of vessels of 300.

The covers for the first of said books shall be of 2-ply cardboard, and for the others of 3-ply.

On the back there shall be stated in gilt characters the number of the volume and the section to which it is destined.

ART. 8. The first and the last sheet of every volume, which shall serve as fly leaves, shall be left blank. On the second sheet the register shall write with his own hand the title in the following manner:

"Commercial Registry of the property of ———.

"Book of (private merchants, associations, or vessels). Volume ——."

The register shall take the volume to the municipal judge of the district in which the office is situated in order that it may be examined by the judge. Should the latter not notice any defect the seal of the municipal court shall be affixed to each folio and the judge shall write in his own hand a certificate in the following terms:

"I, ———, municipal judge of ———, hereby certify that, having examined this volume, which is the (the number appearing in the title) of the book of ———, of the commercial registry of this province, is composed of ——— serviceable folios, including this one, the binding being in conformity with the legal precepts and the sheets being in accordance with the official form."

Date.

Signature of the judge.

Signature of the secretary.

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Should the judge observe any errors in the volume, he shall return it to the register in order that it be substituted by another one not having them.

ART. 9. For every merchant, association, or vessel which is to be recorded in the registry, one page shall be allowed in the proper book, at the top of which the number thereof acording to the chronological order of the presentation of petitions or instruments shall appear.

ART. 10. Every page destined to a merchant, association, or vessel shall be composed of the number of folios the register may consider advisable in order to avoid that the transfer to other volumes be often required.

In case all the folios of a record are filled, there shall be stated at the end of the last one the folio of the current volume where the entries are to be continued, and in the latter another entry shall be made of the folio and volume from which it is continued.

The number of the page shall be preserved, adding the word duplicate, triplicate, etc.

ART. 11. The commercial registers shall conform in the drafting of records, memoranda, and certifications to the provisions contained in these regulations.

ART. 12. The registers shall keep in separate pamphlets or volumes an index for each of the books, with the following details:

1. Surname and name of the merchant, title of the association, or name of the vessel, according to the book to which the index refers.

2. Town in which the merchant or the association is domiciled, or registry of the vessel.

3. Number of the page destined to each merchant, association, or vessel, and folio or volume where it can be found.

4. Remarks.

For each letter of the alphabet the register shall devote the number of folios he may consider advisable, and in order to make the entry on the proper one, the initial of the first surname of the merchant, that of the title of the association, or that of the name of the vessel shall be considered.

Even though it may be necessary, by reason of having used all the folios of the page devoted to a merchant, association, or vessel, to continue in another volume it shall not be necessary to include in the third column the number of the folio and of the volume where it is continued.

In the fourth column the register shall enter the number and folio to which the page of the entry is transferred, the folios of which have been filled, without prejudice to making the remarks he may deem advisable or necessary in order to facilitate the search and to avoid errors.

ART. 13. Besides the books of registry, registers shall have another one which shall be a stub receipt book for the petitions and instruments which may be presented for record.

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In said receipts and at the time of the presentation there shall be stated the day and hour it takes place, the name and surname of the person presenting them, the kind and date of the instrument presented, and the name and surname of the person, authority, or official who subscribes them.

The same data shall be entered in the respective stubs, which shall be signed by the person presenting the document.

The return of instruments and petitions shall be made by means of the return of the stub receipt to the register.

In case the latter should be lost, the former shall be returned to the person interested or to his legal representative only, leaving another receipt which shall serve as a security for the register.

The registers shall keep the stub receipts on file, being liable for the delivery of the instruments, the receipts for which may have been lost.

ART. 14. In all commercial registries, statistics shall be kept in accordance with the instructions from the General Direction.

ART. 15. In order that the books and indexes may be uniform in all the registries, the direction shall distribute forms in advance which the registers must follow with regard to the size, kind of paper, and ruling in the purchase thereof.

ART. 16. Registers shall keep in separate bundles, made up in order of presentation:

1. Copies of the petitions and those of all kinds of instruments recorded of which there is no original on file in a notarial protocol or in public archives.

2. The copies of the quotations of public securities, which they are to receive daily from the board of directors, according to the provisions contained in article 80 of the code of commerce, in places where there is an exchange.

3. The copies of bills of sale of vessels authenticated by our consuls.

4. Official communications.

5. The stub receipts referred to in article 13.

They shall furthermore keep under their custody and liability the books which may be delivered to them in compliance with article 99 of the code of commerce, and shall return them only when ordered to do so by the proper person.

ART. 17. The bundles shall be made up by fixed periods, as may be considered advisable in the judgment of the respective register, and shall be kept in cardboard covers, which shall bear the proper title.

ART. 18. In every commercial registry there shall be an inventory of all the books, indexes, and bundles which constitute its archives. Every year the proper additions shall be made thereto.

ART. 19. The registers shall have an ink stamp with the following inscription:

"Commercial registry (or of vessels) of ———."

The seal shall be affixed on all the receipts and on the documents which may have been taken cognizance of in the registry.

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CHAPTER III.

ENTRIES IN COMMERCIAL REGISTRIES AND THEIR EFFECTS.

§ 1.

General provisions.

ART. 20. Private merchants have a right to demand a record in the commercial registry, as such being considered those who, in accordance with articles 1, 2, and 3 of the code of commerce, without constituting an association, and having the necessary legal qualifications, customarily engage in commerce, or who announce their intention of engaging in the commercial transactions included in the said code, or in any other transactions of a similar character.

ART. 21. The record of existing associations which decide to be governed by the new code of commerce is obligatory, as well as for those which are constituted in accordance with the same or special laws, and for owners of vessels.

ART. 22. The record shall be made on the same day it is requested, unless there is a legal obstacle preventing it.

After the record has been made, there shall be placed at the foot of the petition or instrument which may have been presented a memorandum in the following terms:

"The foregoing (instrument or petition) is recorded at sheet——— folio——— volume——— of the book of——— of the commercial registry or registry of vessels of ———"

Date and full signature.

A similar memorandum shall be placed on the copy of the petition, should there be any, and it shall be kept in the archives of the registry, the original or the instruments recorded being returned to the person interested.

In the proper stub of the receipt book the number of the page and the folio and the volume at which the record was made shall be stated.

ART. 23. All the entries relative to each merchant, association, or vessel shall be made at the proper page, one after the other, without leaving blank spaces between them, and shall have a special and correlative numeration.

The registers shall take care that no blank spaces remain in the entries, and that no corrections or erasures are made, or that any writing be done between the lines.

All amounts and dates shall always be written out.

ART. 24. The errors which may be noticed before signing an entry may be corrected by means of the following formula:

"Line ——— of this entry is incorrect, which should be read thus (here the entire line shall be written in the manner it should be)."

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ART. 25. At the foot of all records the date they were made and the full signature of the register or of his substitute shall be placed.

ART. 26. In records made by virtue of requests only, the date thereof as well as the day and hour they were presented in the registry shall be stated, and the bundle in which the petition is filed shall be indicated. In records made by virtue of a public instrument, the day and hour of its presentation shall be stated, as well as the names and surnames of the parties thereto, the date and place of its execution, and the name and surname of the notary who authenticated it.

In records made by virtue of instruments issued by the Government or its agents, the day and hour of their presentation, their date and the place of issue, and the surname and official position of the authority or official who subscribes them shall also be stated.

In all records the register shall refer to the petitions or instruments by virtue of which they are made, stating the hour and day of their presentation in the registry.

ART. 27. The judges who declare any merchant, association, or owner of a vessel in bankruptcy shall officially forward a mandate to the register, in order that the latter may enter the same by means of a memorandum in the respective page at the end of the last entry.

§ 2.

Special rules for entries in the book of merchants.

ART. 28. A merchant who desires to be recorded in the commercial registry shall present, in person or through a verbal mandate, to the register of the capital of the province in which he is engaged or is about to engage in commerce, a petition drafted on stamped paper of the twelfth class, stating, besides what he may consider advisable, the following details:

1. Name and surnames of the merchant.
2. His age.
3. His status.
4. The kind of commerce in which he is engaged, or is about to engage.
5. The title or name which in a proper case the establishment may have or is to have.
6. The domicile of the same and of the branches, should there be any, either within or without the province.
7. The date on which he began or is to begin to trade.
8. A statement under his liability, to the effect that he is not subject to parental authority; that he has the free disposition of his property, and that he is not included in any of the disqualifications mentioned in articles 13 and 14 of the code of commerce.

With the petition a copy thereof drafted on common paper shall be presented, signed by the person interested, as well as a certificate from the proper municipality stating his enrollment for the purposes of the

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payment of taxes or a receipt showing that he has paid those for the last quarter.

After the copy has been compared with the original and if they conform, the register shall return the certificate or the receipt.

ART. 29. If the record should be requested by a married woman, she shall also present the public instrument containing the authorization of her husband, and in the absence thereof the instrument proving in a proper case that she trades with the knowledge of her husband; that she did so before her marriage; that she is legally separated from him; that he is subject to guardianship; that he is absent and that his whereabouts is unknown, or that he is suffering the penalty of a civil interdiction.

Should a woman who is engaged in commerce marry, the change of her status will have to be entered in the registry.

ART. 30. The record of private merchants shall contain all the circumstances mentioned in article 28, and furthermore those contained in the petition, and which it may be useful and advisable to enter, in the judgment of the register.

ART. 31. The entry of powers and revocations thereof, and of the permissions granted married women to trade, shall only be made by virtue of the respective instruments, and there shall be copied therein the clause containing the powers conferred or their revocation or that of the permission.

ART. 32. For the record of issues which private merchants may make in accordance with the provisions of article 21 of the code of commerce, for that of their total or partial cancellation, and for that of the instruments mentioned in number 12 of article 21 of the same, the provisions contained in articles 40 to 45 of these regulations shall be observed.

ART. 33. In accordance with article 28 of the code of commerce the entry of the instruments referred to in number 9 of article 21 of the same must be requested by the merchant, or by his wife, or by the parents, brothers, or uncles by consanguinity of the wife, as also by those who may have been her guardians, or by those who have or do constitute the dowry in her favor.

ART. 34. In order that the record may be made, it shall be necessary to present the proper instruments with a memorandum to the effect that they have been previously recorded in the registry of property, if there be real estate or property rights included in the dowry or paraphernal property.

In the record relating to paraphernal property the value thereof must be stated, if it appears in the instrument.

In the record of dowry property there shall furthermore be stated the kind of dowry and the name and surname of the person who constituted it, and whether it has been delivered or promised.

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ART. 35. Should the merchant not be recorded in the commercial registry, and a dowry instrument, a marriage agreement, or the record of paraphernal property of the woman married to the former should be presented for record, the record of the merchant shall first be made, by virtue of a request including the necessary circumstances, and signed by the same person who requests the entry in favor of the wife.

§ 3.

Special rules for records in the book of associations.

ART. 36. The directors, presidents, managers, or representatives of the different kinds of commercial associations mentioned in article 123 of the code of commerce are obliged, in accordance with article 17 of the same, to request the entry in the commercial registry of the province where they are domiciled, of the articles of copartnership or of incorporation of the same, as well as the additional articles which change or modify the former in any manner whatsoever, before beginning to transact business.

ART. 37. In order that the articles of copartnership or of association may be entered they must express at least the details required by articles 125, 145, and 151 of the code of commerce, the domicile of the association, and the business to be transacted.

There must also be stated in said articles, or in any other trustworthy instrument, the date on which business is to begin.

These circumstances shall be included in the record with the proper clearness.

ART. 38. Besides the record of the instruments referred to in article 36 of these regulations, associations must place on record—

1. All acts, resolutions, contracts, and circumstances which may affect the free disposition of the capital or credits, as well as those changing or modifying the conditions of the instruments recorded.

2. The powers, general as well as special, for specific transactions as well as the modification, constitution, and revocation of the same. For the record of these instruments, registers shall conform to the provisions contained in article 31 of these regulations.

3. The issue of stock, certificates, obligations of all kinds, and bank notes, and the cancellation of the respective entries.

4. Certificates of industrial property, patents, and trade-marks, in the form and manner established by the laws.

5. The extension of the life of the association.

6. Its partial rescission and total dissolution, except when the latter takes place by reason of the termination of the period for which it was established, the records in such cases being voluntary.

ART. 39. In order to record any issue of stock, certificates, or obligations, for the payment of which real property or property rights are declared liable, it shall be indispensable that there be presented the corresponding public instrument already recorded in the registry of property.

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The record shall state the series and number of shares of the issue to be recorded, their interest, amortization, and premium, should they have either, the total amount of the issue, and the property interests, works, rights, or mortgages which are liable for the payment of the issue, and any other data which the register may consider of use.

ART. 40. The records of the issue of bank notes, obligations, or instruments payable to order or to bearer, for the payment of which no real property or property rights are liable, shall be made in view of the proper instrument, should one be executed, or of the certificate of the minutes containing the resolution to make the issue, and the conditions, requisites, and guaranties of the same.

The certificate must be issued in the shape of a copy certified to by a notary on the request of a party.

The record shall express all that may be necessary in order that the issue, its conditions and guaranties may be clearly understood.

ART. 41. In order that the records of issues referred to in article 39 may be totally or partially canceled, it shall be sufficient to present the instrument or document of the total or partial cancellation, with a memorandum of its record in the registry of property, or a certificate with reference to the latter, to the effect that the record made therein has been totally or partially canceled.

ART. 42. In order to totally or partially cancel the records included in article 40, it shall be sufficient to present in the commercial registry a certificate from a notary in which, with reference to the books and instruments of the merchant or association which may have made the respective issue, there is stated the amortization of the certificates, shares, obligations or bank notes, and the full payment of the amount they represent, stating, if the partial cancelation is desired, the series and numbers of those taken up for amortization; it being the duty of the notary to testify that he has seen the certificates, obligations, or bank notes collected and rendered useless taken up for amortization.

ART. 43. The record of cancelation must clearly state the number of that canceled, and whether it is total or partial. In the latter case the certificates, obligations, shares, or bank notes, the amounts of which have been paid, shall be stated.

ART. 44. The certificates of industrial property, patents, and trademarks shall be recorded after the presentation of the respective instruments, proving that they have been legally granted.

The entry shall state the essential circumstances included in the instrument.

§ 4.

Special rules for records in the book or registry of vessels.

ART. 45. The owners of merchant vessels of Spanish registry and flag shall request their registration in the commercial registry of the province where they may have been registered before undertaking their first voyage or the business to which they are destined.

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Vessels, for the purposes of the code and of these regulations, shall be considered not only the craft engaged in coast or foreign navigation, but also the floating docks, pontoons, dredging boats, mud scows, and any other floating apparatus destined to industrial or commercial maritime services.

ART. 46. The first record of every vessel shall be that of the ownership thereof, and shall contain the details mentioned in number 1 of article 22 of the code of commerce, as well as the registry of the vessel and her value.

ART. 47. In order that the record of the vessel may take place, there shall be presented in the commercial registry a certified copy of the registry or entry of the vessel, issued by the naval commander of the province of her registry.

ART. 48. When a vessel changes her registry, within the same province, this shall be stated immediately after the last entry which may have been made with regard to said vessel, after the presentation of the certificate of the new registry.

Should the change have been made to another province, a literal certificate of the record of the vessel shall be presented to the register of the capital of the latter, in order that all the entries may be transferred to the page assigned the vessel in said registry, under the following heading:

I hereby certify that on page No. ——, folio ——, volume ——, of the registry of vessels of ———, the following entries appear (copy them literally here); this appears from the certificate issued under date of ——— by ———, commercial register of ———, which, in order that the following entry might be made, has been presented in this registry by ———.

Date and full signature.

Immediately thereafter there shall be entered the change of registry, and the register shall officially inform the person in charge of the registry in which the vessel was previously recorded that he has made the change of registry, giving the number of the page, folio, and volume containing the same.

The last of the said registers shall close the record of the vessel, making immediately after the last entry a memorandum in the following terms:

This record is closed, because the vessel in question has been registered in the registry of ——, page ——, number ——, folio and volume.

Date and signature.

ART. 49. If in the case provided for in article 578 of the code of commerce there should be forwarded to the register a copy of the bill of sale of a vessel, he shall acknowledge receipt thereof to the consul, and shall make a memorandum immediately after the last entry made on the record of the vessel, in the following terms:

Memorandum.—According to an instrument executed under date of ———, before the consul of ———, the vessel mentioned on this page has been sold to ———.

Date and signature.

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The copy shall be kept in the archives in a special bundle, and the record shall not be made until the persons interested or any one of them present the bill of sale; but until the latter is recorded no other entries transferring or encumbering the said vessel shall be made.

ART. 50. The captains of the vessels must provide themselves with a certificate of the record of the registry, without which they can not undertake the voyage.

This certificate, which must be literal and which must be authenticated by the captain of the port of departure, shall be considered as sufficient title for the proof of ownership and for her transfer or for the placing of incumbrances by means of a statement written and signed by the contracting parties at the foot of the former, with the intervention of a notary in Spain or consul abroad, who shall testify as to the truth of the act and the legality of the signatures.

Contracts executed in this manner shall have all their effects from the time they are recorded in the commercial registry.

The entry shall take place by presenting either the said record of the registry of the vessel or a literal certificate or the contract authenticated by the shipowner or agent, and in their absence by the captain of the vessel and by the said notary or consul who may have taken part therein.

A new certificate shall not be necessary for each voyage. It shall be sufficient that immediately after the first one which may have been issued all the entries which may have subsequently been made in the respective record of the vessel be certified to.

ART. 51. The certificate of the record of a vessel referred to in the foregoing article, as well as in article 612 of the code of commerce, must be authenticated by the captain of the port of departure who signs the certificate of navigation and the other instruments relating to the vessel.

ART. 52. A memorandum shall be made of the incumbrances which, in accordance with articles 580, 583, and 611 of the code of commerce are placed on a vessel during the voyage, and which according to article 50 of these regulations must be made with the intervention of a notary in Spain and of the consul abroad, which these officials shall keep in their protocols or archives.

Even though the contracts by which these incumbrances are placed, are effective from the time of being entered in the record of the vessel, for the purposes of article 580 of the code, they must be recorded at the end of the voyage in the proper registry.

ART. 53. The owners of vessels sold to a foreigner must present a copy of the bill of sale in the registry in order that the records corresponding to the same may be closed. The notaries and the consuls who may have authorized any instrument alienating a Spanish vessel in favor of a foreigner shall, within the third day, inform the person in charge of the registry thereof, who shall make the proper memorandum in the open record of the alienated vessel.

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ART. 54. The extinction of recorded credits shall, as a general rule, be entered by previously presenting a public instrument or trustworthy document containing the consent of the person in whose favor the record was made, or of the person who proves in due form that he is his legal or personal representative.

In the absence of said instruments a judicial mandate ordering the cancellation must be presented.

If the extinction of the credit takes place by force of law in virtue of an act independent of the will of the persons interested, it shall be sufficient to prove with a trustworthy document the existence of the act which gives rise to the cancellation.

In accordance with the provisions contained in article 582 of the code of commerce, all records prior to the date of the bill of the judicial sale of the vessel shall be considered as legally extinguished.

ART. 55. The records of cancellation shall state clearly if they are total or partial, and in the latter case the amount of the credit paid and the amount still due.

ART. 56. After the disappearance of a vessel or her destruction or alienation to a foreigner has been entered in the registry of the same, the naval chief of the province shall officially inform the commercial register thereof, in order that the latter may make a memorandum at the end of the last entry in the following terms:

According to a communication of ——, dated ——, the vessel above referred to (here state what has taken place), date, and signature.

After this memorandum has been made, no entry whatsoever with regard to the vessel can be made.

CHAPTER IV.

PUBLICITY OF THE COMMERCIAL REGISTRY.

ART. 57. Persons who desire to obtain information with regard to a merchant, association or vessel from the commercial registry may do so in any of the following manners:

1. By the exhibition of the registry.
2. By a certificate with regard to the books.

ART. 58. The register may, at the verbal request of any person, exhibit the page referring to the merchant, association, or vessel which may be designated, in order that it may be examined, and such memoranda taken therefrom as may be considered proper.

ART. 59. The certificate may be obtained by making a request for the same in writing on stamped paper of the twelfth class.

In the request there shall clearly be stated the name of the merchant, association, or vessel, and the record or records to be certified to.

ART. 60. The certificate may be literal or in abstract, as it may be requested, and shall be drafted immediately after the request, adding the sheets of paper of the same class which may be required. Both must state whether besides the record or records they include there

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exist or not other ones relating to the same merchant, association, or vessel.

If a certificate of a record which has been canceled should be requested, the register shall state this fact, even though he may not be requested to do so.

Should there be no records of the kind requested, a certificate to this effect shall be given.

ART. 61. The commercial registers shall exhibit to any person requesting it copies of the official quotations.

They shall also issue certified copies of the same by virtue of a written request on stamped paper of the twelfth class.

ART. 62. The certificates shall be drafted within the shortest period possible, which shall never exceed two days.

ART. 63. Registers shall submit in writing to the judges, courts, and authorities any data which may officially be requested of them, and which appear in the commercial registry, without collecting any fees when the request has not been made at the instance of an individual.

CHAPTER V.

RIGHTS AND LIABILITIES OF REGISTERS

ART. 64. Commercial registers shall earn the fees which are due them strictly in accordance with the schedule which is attached to these regulations.

They can not collect any fees for any work they may do for which fees are not fixed.

ART. 65. At the foot of the respective records, memoranda, and certificates the registers shall state the fees they collect without prejudice to giving a special receipt if requested to do so by the persons interested.

ART. 66. In every registry a book of receipts shall be kept, in which all the fees earned in the order of presentation of the respective instruments shall be entered, even though the same have not been collected.

TRANSITORY PROVISIONS.

1. On the 31st of December of the current year, after office hours, the chief of the section of the interior of the government of the province[1] shall deliver, with an inventory in duplicate, all the books, indices, and packages which make up the archives of the registry of commerce to the respective register.

The inventory shall be signed by both officials and stamped with that of the government of the province,[2] and each one of the former shall keep one copy.

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[1] "The 30th of April of the current year, after office hours, the secretary of the general government or that of the proper province,' according to the same rule of this article of the regulations amended for Cuba and Porto Rico.

[2] The article amended says "with that of the general government."

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This inventory shall serve as a basis for those to be kept in the commercial registries, according to article 24 of the regulations.

At the end of the last entry made in each book a memorandum in the following terms shall be made:

Memorandum.—This book containing (so many) entries is closed, the last entry being that of (here whatever it may be).

Date, signature of both officials and seals.

2. From the day these regulations are published and in accordance with the provisions contained in article 3 of the royal decree of August 22, 1885, mercantile corporations which may be in existence on December 31 of this year, and which may be domiciled in provinces, may present an authenticated copy of their resolutions in accordance with the provisions of the new code to the registry of property of the respective capitals.

3. Articles of association which are executed subsequently to the publication of the code of commerce and before the date the same goes into operation, may be recorded in the commercial registries, if they are in accordance with the provisions of the former, even though they do not contain all the requisites of the prior law.

4. The general direction of registries and of notaries shall issue the proper provisions in order that the commercial registries may begin to transact business with due regularity on January 1, 1886, as well as those for the execution and fulfillment of these regulations.[1]

5. The temporary registers shall submit every six months to the said direction a report on the inconveniences they may have noticed in the application of these regulations, in order that they may be taken into consideration for the amendments which are to be made at the proper time in this branch of commercial legislation.

Approved by Her Majesty:

MANUEL ALONSO MARTINEZ.

MADRID, *December 21, 1885.*

SCHEDULE OF FEES FOR COMMERCIAL REGISTERS.[2]

	Pesetas.
No. 1. For every entry made in the book of merchants not mentioned in the following numbers	2
No. 2. For the entry of a change of any circumstance relating to a private merchant	1

[1] The same rule of the article of the regulations amended for Cuba and Porto Rico is as follows:

"4. The general direction of grace and justice of the colonial department shall issue the proper provisions in order that the commercial registries may begin to transact business with due regularity on May 1, 1886, as well as those for the execution and fulfillment of these regulations."

[2] The same officials shall, in Cuba and Porto Rico, collect the following fees: In the case of No. 1, 0.80 peso; 0.40 in that of No. 2; 1.20 in that of No. 3; 1.60 in that of No. 4; and in that of No. 5, if the social capital or the amount of the issue does not exceed 100,000 pesos, 2 pesos; if over 100,000 and not more than 200,000, 4 pesos; if over 200,000 and not more than 400,000, 6 pesos; if over 400,000 and not more than 800,000, 8 pesos; if over 800,000, 10 pesos; in the the case of No. 6, 0.80; in that of No. 7, if the amount of the insurance does not exceed 100,000 pesos, 2 pesos; if over 100,000 and not more than 200,000, 4 pesos; from 200,001 to 400,000, 6 pesos; if over 400,000, 8 pesos; in the case of No. 8, 2 pesos; in that of No. 9, 0.40; in that of No. 10, 0.40; in that of No. 11, 0.40; Nos. 12 and 13, the same as for the Peninsula; in the case of No. 14, 0.40; in that of No. 15, 0.40; in that of No. 16, 0.40; and 2 pesos in the case of No. 17.

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	Pesetas.
No. 3. For the entries of powers, their modification, substitution, or revocation, and for the entry of certificates of industrial property, patents, and trade-marks in any of the books	3
No. 4. For entries of dowries, marriage contracts, or paraphernal property	4
No. 5. For the first entry of any association, and for records of issues of all kinds, the fees indicated below shall be charged:	
If the capital or the amount of the issue does not exceed 250,000 pesetas	5
If over this amount and not more than 500,000	10
If over 500,000 and not more than 1,000,000	15
If over 1,000,000 and not more than 2,000,000	20
If over 2,000,000	25
No. 6. For the registration of any vessel or change in the circumstances thereof.	2
No. 7. For the entries of contracts by virtue of which vessels are rendered liable for the payment of an obligation there shall be collected:	
If the amount of the obligation secured does not exceed 250,000 pesetas	5
If over said amount and not more than 500,000	10
From 500,001 to 1,000,000	15
If over 1,000,000	20
No. 8. For entries made in the book of associations and in the registry of vessels not mentioned in the foregoing numbers	5
No. 9. For every memorandum to be made in the books of the registry, according to the provisions contained in the regulations	1
No. 10. For the transfer of every entry from one registry to another	1
No. 11. For the exhibition of a record in any of the books	1
No. 12. For a literal certificate of every entry, one-quarter of the fees which would have been charged for said record.	
No. 13. For a certificate in abstract of every entry, one-eighth of the amount which would have been charged for the record itself.	
No. 14. For a record of every official quotation on exchange	1
No. 15. For a certificate of every quotation	1
No. 16. For any negative certificate	1
No. 17. For the custody of books in the case of article 99 of the code of commerce	5

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COMMERCIAL EXCHANGE REGULATIONS.

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ROYAL DECREE.

Taking into consideration the reasons stated to me by the secretary of grace and justice, in conformity with the opinion of the council of secretaries, and after hearing the council of state,

I hereby approve, as temporary, the annexed regulations for commercial exchanges and licensed agents, which shall go into operation on January 1, 1886.

Given at the Palace on December 31, 1885.

MARIA CRISTINA.

MANUEL ALONSO MARTINEZ,
Secretary of Grace and Justice.

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PROVISIONAL REGULATIONS FOR THE ORGANIZATION AND MANAGEMENT OF COMMERCIAL EXCHANGES.[1]

CHAPTER I.

ARTICLE 1. The commercial exchange actually in existence in Madrid shall continue to transact business in accordance with the provisions contained in the Code of Commerce and in these regulations.

In order to establish new commercial exchanges in any town of the Kingdom[2] with an official character, either general or special, there must exist reasons of public utility or convenience, which shall be stated in proceedings and in which the council of state shall be heard. The final decision shall be rendered by means of a royal decree on the recommendation of the secretary of the interior.

The authorization requested by corporations or private parties to create such establishments shall be granted in the same manner.

ART. 2. General or special commercial exchanges of a private character may only be created by associations established in accordance with the code when the power of doing so is one of their social ends.

In order that the quotations of the transactions made and published in these establishments may have an official character, the proper authorization must be obtained from the Government, which shall be granted after the proceedings and requisites mentioned in the foregoing article.

ART. 3. With regard to exchanges which have been created on the exclusive initiative of the government, the expenses of their establishment and of the personnel and material shall be charged to the general budget[3] of the State. These expenses shall be fixed by the department of the interior[4] after hearing the board of directors and the officials, and employees of the institution shall be public employees, whose

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[1] These regulations, with some unimportant modifications, which are indicated by means of footnotes to the respective articles, were extended to the islands of Cuba and Porto Rico by a royal decree of April 16, 1886, and went into force in said islands on May 1, 1886. In order to avoid useless repetitions it should be remembered that the numbering of the articles, and therefore the number thereof, is identical in both regulations; that where there appears in the regulations for the Peninsula "*Department of the Interior*," those amended say "*Department of the Colonies*;" "*Habana*" instead of "*Madrid*," treating of exchanges; "*Gaceta de la Habana and Puerto Rico*" instead of "*Gaceta de Madrid*;" "*Spanish Bank of the Island of Cuba*" instead of "*Spanish Bank*;" etc.

[2] "*Of the islands of Cuba and Puerto Rico*," according to article 1 of the regulations in force in the same.

[3] "*Of the island in which they are created*," according to the regulations of said islands.

[4] "*The department for the colonies, hearing the Governor-General and the board of directors*" say the amended regulations.

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appointments shall be made by the government[1] on the recommendation of the board of directors, and can not be removed except by virtue of proceedings in which the persons interested and the board of directors shall be heard.

ART. 4. In the exchanges, the establishment of which is authorized by the government in towns which request it by reason of convenience for public transactions, the government may contribute for the expenses of their creation and support the amount it may consider advisable by way of subsidy, and with the conditions and reservations it may consider proper, which shall be included in the authorization.

The expenses of the creation and support of the exchanges established by associations shall be defrayed exclusively by the same, and shall therefore unrestrictedly appoint and remove the employees; but they must always inform the department of the interior[2] thereof.

ART. 5. The commercial exchanges, by reason of their character as public establishments, the purpose of which is to agree upon and fulfill the commercial transactions mentioned in the code of commerce, shall come under the jurisdiction of the department of the interior.

With regard to public order, the exchanges shall be subject to the inspection of the civil governor in the capitals of provinces and to that of the superior administrative authority in other towns, and said inspection shall be made in the name and representation of the same by an inspecting delegate appointed by the Crown.

The board of directors of the association of agents shall have the interior government and police of the exchange in charge and shall discharge the duties which are proper in accordance with the code of commerce and the provisions of these regulations.

ART. 6. No authority, with the exception of the governor of the province, and in his absence of the superior administrative authority of the locality, may exercise his powers in exchanges, except when called upon by the inspector or by the board of directors.

ART. 7. The representation of the Commercial Exchange, in so far as the transaction of business is concerned, corresponds to the board of directors of the association of stock and exchange brokers, under the dependency of the department of the interior, and in accordance with the provisions of the code.

ART. 8. The exchanges created or authorized by the Government, as well as those established by associations which have obtained an official character for their quotations, shall be governed by the provisions of these regulations.

Exchanges which are of a private character only shall be governed by the rules contained in the code of commerce and in the by-laws and regulations approved by the associations which established them.

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[1] "*By the said department on the recommendation of the board of directors submitted through the said Governor-General.*"

[2] The regulations amended for the said island adds, "*through the Governor-General of the island.*"

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ART. 9. The interior regulations of every exchange shall be drawn up by its respective board of directors, and there shall be established therein the provisions which may be convenient for the interior government and police of the same, and for the order of the meetings, as well as the rules necessary in order that the intervention of agents in contracts may be uniform. They shall also determine the books which brokers are to keep and the forms with which they are to comply. These regulations shall be submitted for the approval of the department of the interior.

CHAPTER II.

LICENSED COMMERCIAL AGENTS WHO TAKE PART IN TRANSACTIONS ON EXCHANGE, APPOINTMENT AND ORGANIZATION OF THE SAME, AND DUTIES INTRUSTED TO THEM.

ART. 10. The intervention in negotiations and transfers of public securities and property which in accordance with the code of commerce may be quoted, can only be exercised by stock and exchange agents.

In other exchange transactions and contracts, exchange and stock agents, as well as commercial brokers, may take part.

Ship-broking interpreters can only take part in the contracts which the code specially intrusts to this kind of commercial agents.

ART. 11. Exchange and stock agents, when they act as commercial brokers, shall conform to the provisions contained in articles 106 to 110 of the code of commerce which fix the duties of said brokers.

In order to discharge the duties of ship-broking interpreters, exchange and stock brokers, as well as commercial brokers, must obtain special authorization, and must prove their knowledge of two modern foreign languages.

ART. 12. Appointments of exchange and stock agents shall only be made for commercial seats where a commercial exchange is already established or will be.

ART. 13. The proceedings on requests for appointments as commercial agents shall be instituted before the bureaus of the interior of the governments of provinces,[1] and the persons interested shall attach to the communication addressed to the governor the documents proving the requisites of article 94 of the code.[2]

The Governor-General shall forward the proceedings to the department of the interior, after hearing the board of directors of the proper association on the second case of article 94 and on the provisions contained in articles 13 and 14 of the code of commerce.

The certificate can not be issued to the persons interested without their first showing that they have deposited in the name of the board of

[1] "*In the governments of provinces of the island of Cuba and in the general government of that of Porto Rico,*" according to the same article in the amended regulations.

[2] The said regulations say: "*These proceedings shall be forwarded by the general government and with their amendment to the colonial department.*"

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directors in the depositories mentioned in article 94 of the code[1] the cash or securities which are to constitute their bond for the discharge of the office, and without taking the oath prescribed by law before the governor of the province.

After these requisites have been complied with, the board of directors shall place them in possession of their offices; shall forward an authenticated copy of the certificate, together with the certificate of possession, to the governor of the province for transmission to the department of the interior; shall announce on exchange the taking of possession, and shall authenticate it with the autograph signatures of the persons interested, forwarding them to the dependencies of the treasury and to the principal credit institutions.

In provinces where there is no board of directors, the provincial councils of agriculture, industry, and commerce shall give the information referred to in the second paragraph of this article, and shall substitute the former for all the purposes of this article.

ART. 14. In each of the towns where a commercial exchange is established the stock and exchange agents assigned to the same, no matter what their number may be, shall constitute an association.

The commercial brokers and the ship-broking interpreters, respectively, shall also constitute an association when there are five in one town.

In places where, by reason of the lack of number, no association is established, the commercial brokers and ship-broking interpreters shall come under the jurisdiction of the superior administrative authority of the province.

ART. 15. The associations of commercial agents shall be presided over by boards of directors.

The board of each association of exchange and stock agents shall be composed of one syndic president, one vice-president, and five associates, and two substitutes to take the place of the associates in case of absence or sickness.

If the number of associates is not sufficient to fill all the positions on the board, they shall constitute an association board.

In the associations of brokers and ship-broking interpreters the board shall be composed of one president, two associates, if the number of the members does not exceed 10, and four associates if said number is greater, besides one substitute.

The offices on the board are obligatory and for two years.

ART. 16. It is the duty of the boards of directors to draw up the regulations for the interior administration of each association, which must be submitted for the approval of the department of the interior.

ART. 17. The boards of directors of the associations of commercial brokers in towns where there is an exchange, shall exercise the powers

[1] "*In the central treasury of the island, or in its branches, or in the banks authorized to receive them,*" according to the same article of the amended regulations.

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corresponding to them within the corporation over which they preside, entirely independently of the exclusive authority which the board of directors of the association of stock and exchange brokers has in the exchange.

ART. 18. The boards of directors shall inform the government of all consultations addressed to them.

In cases in which the code, or these regulations, do not determine which board of directors of stock and exchange agents is to be consulted, it shall be understood that that of Madrid is the proper one.[1]

ART. 19. Commercial agents shall conform in the drafting and issue of instruments of contracts in which they take part by reason of their office to the directions which the respective boards of directors of the association to which they belong have adopted, and to the policies and documents stamped with the seal of the State, or shall incur a fine of 100 to 500 pesetas,[2] which, according to the cases, the board of directors may impose at their discretion, the amounts of said fines going to the funds of the corporation.

They shall also adopt in the entries in their registry the language and form which the board of directors of their respective association may consider most advisable.[3]

ART. 20. Only in case of the impossibility of an agent may another member of the association make transactions in the name and under the exclusive liability of the former, and previously informing the board of directors of the authorization granted.

Nevertheless, exchange and stock agents are authorized to make use of clerks who in their name and under their liability may make the entries of the transactions in the memorandum book or pamphlet, the former placing their rubric at the margin of each one.

ART. 21. The resignations from office of agents and brokers shall be submitted to the board of directors of the association to which they belong, which shall immediately accept them, informing the department of the interior, and shall proceed as prescribed in the code and in these regulations for the return of the bond, announcing it on exchange and also informing the superior administrative authority of the locality, the dependencies of the treasury, and the principal establishments of credit, to whom the appointments shall be communicated.[4]

Commercial brokers and ship-broking interpreters who do not constitute an association shall submit their resignations to the superior administrative authority.

ART. 22. Commercial brokers who, with the exception of the case provided for in the third paragraph of article 545 of the code, take part,

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[1] "*That of Havana or San Juan de Puerto Rico, according as to whether the case corresponds to one or the other island,*" says the same article amended.

[2] Twenty-five to 250 pesos in Cuba and Porto Rico.

[3] This paragraph has been suppressed in the regulations amended to which we have been making reference.

[4] In the article amended the words "*to whom the appointments shall be communicated*" are omitted.

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in any manner whatsoever, in transactions which do not correspond to them in accordance with article 100 of the same, shall be deprived of their office, after proper proceedings instituted and forwarded to the department of the interior by the board of directors of the association of exchange agents, without prejudice to the civil or criminal liability which must be exacted in a proper case of said brokers.

CHAPTER III.

Meetings on exchanges.

ART. 23. Meetings on exchange shall be held in the building destined to the purpose, daily, with the exception of complete feast days, the Saints' days of the King, Queen, and Prince of Asturias, Holy Thursday and Friday, and national holidays.

ART. 24. The hours of meeting on exchange shall be from half past 1 to half past 3 p. m. for all kinds of transactions.

For no reason or pretext whatsoever shall the meeting be extended for a longer period.

The department of the interior, in view of the interests of commerce and hearing the board of directors, may change the business hours.

ART. 25. The opening of the meeting of the exchange shall be announced by three strokes of a bell, and the closing thereof in the same manner.

At the last stroke all the persons attending must leave the building.

ART. 26. The president of the board of directors of the association of exchange and stock agents, or the member thereof taking his place, shall adopt at the meeting of the exchange the measures which may be necessary to preserve order, and shall not permit those attending, no matter what their class and category may be, to enter with arms, canes, or umbrellas.

In a necessary case the president may order the arrest of any person causing any disorder, immediately informing the governor of the province or the superior administrative authority of the town, and placing the said person at his disposal.

ART. 27. In the meeting room of the exchange there shall be posted, and permanently affixed, a list of the names of the licensed commercial agents with their addresses.

CHAPTER IV.

ADMISSION OF PUBLIC SECURITIES, DOCUMENTS OF CREDIT, BONDS, AND SECURITIES PAYABLE TO BEARER IN EXCHANGE TRANSACTIONS AND THEIR INCLUSION IN THE OFFICIAL QUOTATIONS.

ART. 28. In order that the public securities mentioned in No. 1 of article 68 of the code, and in the same number of the article preceding

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it, may be admitted to negotiation and included by the board of directors in the official quotations, there shall be required:

1. The previous declaration of the government that their circulation is authorized.

2. The publication in the *Gaceta de Madrid* of the number of certificates issued, their series and numbering, and the date they are to be publicly negotiated.

ART. 29. If the issues referred to in the foregoing article are to be circulated at different dates, the same procedure shall be observed with regard to each one, before the board of directors may permit the negotiation of the respective certificates and their inclusion in the official quotations.

ART. 30. For the admission to negotiation and inclusion in the official quotations of the public securities issued by foreign countries, there must precede—

1. The report of the board of directors of the association of exchange agents.

2. The publication in the *Gaceta* of the conditions and circumstances of the issue and the date from which they may be the subject of public negotiation.

ART. 31. It shall be the exclusive power of the board of directors of the association of exchange agents of Madrid to grant the admission to negotiation and inclusion in the official quotations of instruments of credit and securities or bonds payable to bearer referred to in articles 69, 70, and 71 of the code and in the second part of article 30 of these regulations, in accordance with the provisions contained in the following articles.

ART. 32. The board of directors, in order to adopt a resolution of admission to negotiation and inclusion in the official quotations of the instruments, securities, or bonds payable to bearer referred to in the foregoing article, must institute at the request of the persons interested the proper proceedings, in which there shall be proven that all the formalities and conditions respectively required by articles 69, 70, and 71 of the code of commerce have been complied with.

In the case of article 70 of the code, that is, when instruments of credit issued by foreign countries payable to bearer are in question, there must be submitted in the proceedings as an essential statement the declaration of the Government that there are no reasons of public interest which are opposed to their admission to negotiation and inclusion in the official quotations.

ART. 33. In case of disagreement with the resolutions of the board of directors with regard to the admission and inclusion of public bonds in official quotations, the persons interested may appeal to the department of the interior within the period of three days. The decision of the department shall be final, and the only remedy against the same shall be by litigation.

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ART. 34. After the board of directors has granted the admission and inclusion in the official quotations of the instruments of credit, securities, or bonds payable to bearer, it shall inform the department of the interior thereof.

The resolution of the board of directors shall be published by the same in the *Gaceta de Madrid*, with a summary of the circumstances and conditions of the issues and of the guaranties offered.

This announcement in the *Gaceta* shall also be for the account of the persons interested.

ART. 35. The establishments, associations, or national or foreign enterprises, and private ones which have issued instruments of credit payable to bearer, which have been admitted and included in the official quotations, shall forward to the board of directors the report they may periodically make, in accordance with their by-laws; at the proper time the lists of the amortizations they effect; and whenever requested, exact data with regard to the condition of the issues and of the payment of interest, in order that they may be consulted by the public.

The absence of these data after one month has elapsed from the time they should have been submitted to the board of directors shall be announced by the latter corporation on the board of edicts of the exchange.

CHAPTER V.

EXCHANGE TRANSACTIONS.

SECTION FIRST.

Intervention of exchange agents in exchange transactions.

ART. 36. It is the principal duty of licensed exchange agents to take part in the negotiation and transfer of all kinds of public securities which can be quoted, defined in article 68 of the code of commerce.

They may furthermore take part, in concurrence with commercial brokers, in all other exchange transactions and contracts, subjecting themselves to the liabilities proper to these negotiations.

ART. 37. An exchange agent who has been requested to take part in a negotiation can not refuse to do so, but he shall be entitled to demand of the principal the guaranties he may consider necessary for the security of the negotiation during the time the latter is pending.

In the case of article 322 of the code of commerce, the deposit of certificates for the guaranty of loans may be made in the Spanish Bank or its branches or in the general depository.[1]

ART. 38. It is the duty of an exchange agent who may have taken part in a transaction which is to be quoted to see that it is immediately published, in accordance with article 78 of the code of commerce,

[1] The article amended states, instead of bank, etc., "*Spanish Bank of the island of Cuba, in its branches or in the Treasuries, according to the island in which the deposit is to be made.*"

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for which purpose he shall make a signed memorandum which he shall deliver to the announcer, who, after reading it to the public aloud, shall turn it over to the board of directors.

In case the transaction should have taken place outside of the building of the exchange, the agent who may have taken part therein shall take care under his liability that the publication be made at the opening of the meeting of the exchange of the same day, or at the opening of the meeting of the next day if the transactions should have taken place after the official business hours.

ART. 39. In negotiations in which agents take part they shall strictly conform to the rates of exchange, the board of directors exercising the most careful vigilance on this point, which shall decide with its authority the difficulties which may arise.

ART. 40. In the negotiation of bonds payable to bearer which can be quoted on exchange the licensed agent who is the vendor thereof shall deliver a memorandum of their numbers to the purchaser, and shall demand of the latter another memorandum with the name of the person in whose favor the transfer is to take place.

In order that said transfer may take place the documents representing the securities which have been the object of the transaction shall be delivered before twenty-four hours have elapsed, in the proper office, stating the name of the assignee and the other necessary details.

ART. 41. The request for the paper negotiated on time and at the will of the purchaser must be made, unless there is an agreement to the contrary, before the last half hour of the official meeting of the exchange, the transaction being thereby considered as lapsed and shall be liquidated the following day.

ART. 42. The statements of options in transactions which include this condition, must be made to the contracting party, or in his absence they shall be brought to the attention of the board of directors at the proper time until one-half hour before the closing of the exchange on the day the contract lapses.

ART. 43. The board of directors shall provide the tardy agent with the proper certificate when it appears from the papers presented that his delay was due to the nonfulfillment of his principal, in order that he may in his turn bring an action against the latter, according to the provisions of articles 77 and 103 of the code.

SECTION SECOND.

Duties of the board of directors of exchange agents.

ART. 44. The following are the duties of boards of directors of exchange agents, representing the exchanges and intrusted with their management and government:

The publication of the transactions.

To draw up the records of quotations.

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To fix the rates of the same.

To publish the exchange bulletin.

To discharge the work of liquidation.

In the discharge of these duties the board of directors shall conform to the provisions of the following articles:

ART. 45. For the publication of the transactions, the board of directors shall decide the form and model of the memoranda which are to be made for said purpose, including all the cases of the different transactions authorized by article 75 of the code of commerce.

ART. 46. In the office of the board of directors there shall be kept in packages, arranged by days, the memoranda published, in order that they may be consulted whenever necessary.

A statement of the transactions published, mentioning the number of each kinds of securities negotiated, for cash as well as on time, shall be forwarded daily to the Department of the Interior.[1]

ART. 47. The announcer shall conform exclusively to the orders of the board of directors, and any malicious change he may make in the publication of transactions shall be punished by suspension from office and salary, without prejudice to his removal and the other liabilities which may be proper.

ART. 48. In accordance with article 80 of the code, the board of directors is the authority intrusted with drawing up the record of the quotations in view of the memoranda published and the data furnished by the agents who take part in transactions.

The record of quotations shall state clearly—

1. The successive movement which the public securities and industrial or commercial bonds may have had rising and falling, from the beginning to the end of the negotiations of each class, and the circumstances and conditions under which they took place.

2. The maximum and minimum price of the other contracts designated as proper subjects of negotiation on exchange by article 67 of the code, the rate of discount of drafts, and the exchange on bills of exchange and loans.

The record of quotation may also include, when decided by the board of directors, the rate of discount received by licensed exchange agents, that of interest or coupons due or about to become due, and certificates of securities taken up by amortization which can be quoted on exchange.

The quotation of all kinds of national bonds shall be made and published in accordance with the decimal system.

ART. 49. The association of commercial brokers in towns where there is an exchange shall forward daily to the board of directors of the association of exchange agents a memorandum of the current exchanges and of the prices of merchandise in order that, together with the other

[1] According to the same article of the amended regulations, the statement is to be sent to the general government of the island in which the exchange is situated, which authority shall forward it every ten days to the colonial department.

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data determined in article 80 of the code, the record of the official quotations may be drafted.

ART. 50. The record of quotations shall be authenticated with the signature of the syndic president or of the person acting in his stead, and of two members of the board of directors; and those corresponding to each year shall be entered in a bound and folioed registry, on the pages of which the seal of the corporation shall be affixed daily.

An authenticated copy of this original shall be issued to be forwarded daily to the commercial registry in accordance with article 80 of the code, and the same shall serve for the publication of the quotation bulletin.

ART. 51. The board of directors only may publish the exchange quotation bulletin, which shall be done after the memorandum referred to in article 48 of these regulations has been made.

No private person or corporation is allowed to publish a quotation bulletin different from that drafted by the board of directors.

ART. 52. Immediately upon the publication of the bulletin the board of directors shall affix a copy thereof on the board of edicts of the exchange.

It shall announce to the public in a similar manner the telegrams relating to the exchange quotations of national and foreign exchange immediately upon their receipt.

The departments of the treasury and interior[1] shall do what may be necessary in order that the telegrams relating to exchanges which may be received are true statements of the quotations, and in order that they may be communicated as soon as possible directly to the board of directors.

ART. 53. Said board shall also forward a copy of the bulletin of the quotations to the colegislative bodies, to all the departments, to the general offices of the treasury, of the public debt, and those of agriculture, industry, and commerce, to the superior administrative authority of the locality, commissions of the treasury of Spain abroad, *Gaceta de Madrid*, to the boards of directors of the other exchanges of the country, and to any other dependency of the State which may be designated by the department of the interior.[2]

ART. 54. In accordance with the second paragraph of article 105 of the code, the board of directors shall fix the rate of transactions on time with the obligation of delivering securities at the closing of exchange on the last day of the month, taking as a basis the average of the quotation for the same day.

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[1] "*The Governors-General*," according to the amended regulations.

[2] The text of the same article, amended for Cuba and Porto Rico, is as follows:

"ART. 53. Said board shall also forward a copy of the bulletin of quotations to the general government, to the general intendance of the treasury, to the *Gaceta* of the island, to the treasury commissions from abroad, to the boards of directors of the other exchanges of the nation, to the administrative authority of the province, and to the colonial department."

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The daily average prices of transactions and quotations on time with the obligation of delivering securities shall be the regulating one, in order to adjust the differences in transactions of a similar character in which said obligation is not stipulated.

If on the due date of these transactions none should have taken place with the obligation of delivering securities, the rate on the nearest exchange at a prior meeting where there may have been any shall serve for their liquidation.

ART. 55. The board of directors shall adopt the form it may consider most advisable to make the general liquidation of the month, intrusted to the same by article 105 of the code, of the transactions on time in which licensed exchange agents have taken part, and the measures necessary in order that the partial liquidations may be delivered to the same on the day following the date they fall due, and so that the general liquidation may be concluded on the third working day thereafter.

Private persons who have transactions through licensed exchange agents may present in their name the proper liquidation to the board of directors.

ART. 56. In order that agents may avoid the effects of their civil liability for the certificates or bonds they may negotiate after the board of directors may have published on exchange the denunciation of their illegal origin, according to article 104 of the code, they shall be obliged to consult the original complaints which may have been presented to said corporation.

For this purpose, besides the proper arrangement of these denunciations in packages, and for the purpose of making their examination easier, the board of directors shall have a guidebook in which the numbers and series of the securities denounced shall be entered according to the securities, as well as the names and surnames of the complainants, date of the publication of the complaint, and of the annulment of the advertisement or of its confirmation by the court taking cognizance of the question.

This book shall only serve as an auxiliary to determine the original denunciations, from which the agents shall take the memoranda they may consider advisable for their security.

ART. 57. The complaints by reason of theft, robbery, or loss of securities which can be quoted, which are addressed to the board of directors of the association of exchange and stock agents in the manner prescribed in articles 559 and 565 of the code, shall be drafted and signed in duplicate on the forms which said corporation may adopt for proper uniformity.

ART. 58. The telegrams which authorities may address to the board of directors by reason of the robbery, theft, or loss of securities which can be quoted, shall be published also in the exchange in the manner in which they are drafted, for the same purposes as those mentioned in articles 560 and 561 of the code.

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ART. 59. The notice of the complaint by the board of directors to those of the same kind in the country which is prescribed by article 559 of the code of commerce shall be communicated by telegraph if possible, and in all cases by means of the first mail.

ART. 60. Errors in the numbering, series, and classes of securities denounced are imputable to the complainants for the purposes of article 569 of the code, and shall be corrected as soon as observed by making a new publication of the complaint on the exchange, and at the expense of the complainant in the official newspapers.

CHAPTER VI.

BONDS OF AGENTS.

ART. 61. The licensed exchange and stock agents shall constitute, as a guaranty of the discharge of their office a bond in cash or public securities computed at the average quotation of the last exchange day of the months of July and December.

The public securities in which this bond may be constituted shall be those issued directly by the State, or with a subsidiary guaranty of the nation.

The bond shall be deposited in the name of the board of directors, this corporation issuing the proper receipt to the person interested.

The bond to be given by exchange or stock agents shall be of:

Fifty thousand pesetas in the towns of Madrid, Barcelona, Valencia, Santander, and Bilbao.

Thirty thousand pesetas in those of Malaga, Sevilla, Cadiz, Coruña, Tarragona, Alicante, Palma de Mallorca, San Sebastian, Valladolid, and Zaragoza.

And fifteen thousand pesetas in any other town in which commercial exchanges are established.[1]

ART. 62. The bond of stock and exchange agents shall be exclusively liable for the transactions they may make as such. Only in the case the agent does not possess other property, can the said bond be attached for liabilities not proper to the office; but they shall not be effective until after six months from the time said agent discontinues in the exercise of his profession, and only with regard to that part of the bond which may have remained exempt from the liabilities of the office to which it was subject.

For this purpose the board of directors, as soon as notified that the agent has consented to the decree of auction in executions brought for private debts not connected with his office or the final judgment, shall suspend him from the discharge of his duties until within the following twenty days he replaces in his bond the amount demanded in accordance with article 98 of the code.

[1] Fifteen thousand pesos in the town of Havana, 10,000 in that of San Juan de Puerto Rico, and 5,000 in other towns of Cuba and Porto Rico in which commercial exchanges exist or are to be established.

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If the bond should be made up the board of directors shall place at the disposal of the court the amount which may be demanded, and the suspension of the agent shall be raised.

Should this not be done, the latter shall in fact be removed from office, and the period of six months shall begin to be counted for the preference in the claims against the bond for obligations to which the same is specially liable.

ART. 63. In case the agent does not comply with the obligations he may have contracted in the discharge of his office, the board of directors, in accordance with the provisions contained in articles 77 and 98 of the code, shall realize the amount of the bond of the former which may be necessary to meet the proper claims, provided the person prejudiced desires the fulfillment of the transaction.

ART. 64. The amounts for which the bond is liable shall be covered, when the latter does not consist of cash, with the proceeds of the sale of the public securities in which it was constituted.

ART. 65. Commercial brokers shall constitute as security for a faithful discharge of their office a bond in cash or in public securities appraised in the manner provided in article 61 of these regulations, in accordance with the following scale:

Of 5,000 pesetas in the towns of Madrid, Barcelona, Valencia, Santander, and Bilbao;

Of 3,750 pesetas in those of Malaga, Sevilla, Cadiz, Coruña, Tarragona, Alicante, Palma de Mallorca, San Sebastian, Valladolid, and Zaragoza;

And of 2,500 pesetas in other towns of the Kingdom.[1]

ART. 66. Ship-broking interpreters shall constitute a bond equivalent to one-half that fixed for commercial brokers in the foregoing article in the respective maritime towns.

ART. 67. The return of the bond of commercial agents in the three cases of resignation, removal from office, and death shall be announced on the board of the exchange, in the *Gaceta de Madrid*, and in the official bulletin of the provinces, the period of six months being fixed, in accordance with articles 98 and 946 of the code, in order that the proper claims may be made before the courts.

After this period has elapsed without any claim having been brought against the bond in due form, the board of directors shall return the same to the persons interested, or to their legal representatives, after it is proven that they have deposited their books in the commercial registry, as prescribed in article 99 of the code.

The governor of the province shall proceed in the same manner for the return of the bond given in his name by brokers and ship-broking interpreters who do not form an association.

[1] Of 2,000 pesos in the town of Havana, 1,500 in that of San Juan de Puerto Rico, and 1,000 in other towns in the islands of Cuba and Puerto Rico.

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CHAPTER VII.

SCHEDULES.

ART. 68. Licensed exchange agents shall conform in the collection of their fees for intervention in contracts and transactions which the code intrusts to them to the following:

Schedule of fees for licensed exchange and stock agents.

1. In negotiations, transfers, credit accounts with security and subscriptions to issues of all kinds of public securities, in which they take part exclusively by reason of their office, and in secured loans of these securities, two per 1,000[1] on the cash to be collected to be paid in equal parts by the contracting parties.

2. In other transactions, instruments, or contracts in which they take part together with commercial brokers, the fees fixed for the latter in their schedule.

These fees shall be earned by the agents even in case the transaction is not consummated on account of the fault of the contracting parties, and when the latter is concluded they shall be paid at the time of liquidating the transaction, with the exception of what is prescribed with regard to negotiations on time.

3. For the certificates they may issue with reference to transactions which appear in their registry, 10 pesetas,[2] provided the instrument does not include more than two entries, and if more than this number, 5 pesetas for each one.

4. In searching for transactions in their registry, ordered by the courts or authorities, 10 pesetas[3] for the examination of the entries for each month.

ART. 69. Without prejudice to what may be definitely established with regard to fees of boards of directors, that of the association of agents of Madrid shall continue to collect those it earns at present in accordance with the customs established.[4]

ART. 70. Commercial brokers shall earn in negotiations and contracts in which they take part by reason of their office the fees fixed in the following:

Schedule of fees for commercial brokers.

1. In negotiations of industrial and commercial securities, metals, and merchandise, 2 per 1,000[5] on their cash value, to be paid in equal parts by the contracting parties.

2. In bills of exchange, drafts, promissory notes, and discounts, 2 per 1,000[5] on their cash value, to be paid in equal parts by the contracting parties.

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[1] Three per 1,000 in Cuba and Porto Rico.
[2] Four pesos in Cuba and Porto Rico.
[3] Four pesos.
[4] The same article amended says:
"ART. 69. The fees of the boards of directors shall be established by the same after approval of the governor-general."
[5] 3 per 1,000 in Cuba and Porto Rico.

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3. For their attendance at auctions of drafts or other commercial securities where they do not obtain the award, 50 pesetas to be collected from their principal.[1]

If he has received the award, he shall collect 10 per 1,000[2] on the cash and half from each contracting party.

4. In land insurance, 10 per 100 on the amount of the premium charged the insured.

5. For certifications of exchanges, accounts, redrafts, 1 per 1,000 collected from the drawer.

6. For the search for transactions and certificates which they may issue with reference to the entries in their registry, the fees fixed for the same work for exchange agents in their respective schedule.

ART. 71. Ship-broking interpreters shall earn, in contracts in which they take part by reason of their office and for the services they may render, the fees fixed in the following:

Schedule of fees for ship-broking interpreters.

1. In marine insurances 8 per 100 on the amount of the premium, to be collected from the underwriter.

2. In charters of vessels 4 per 100 on the amount of the charters, to be collected from the captain or from the charterer.

3. In loans on bottomry or respondencia 1 per 1,000 on the amount of the principal loaned, to be paid in equal parts by the maker and recipient of the loan.

4. For the work referred to in number 2 of article 113, they shall earn, if the time consumed by the ship-broking interpreter does not exceed one hour, 10 pesetas.[3]

For every fifteen minutes over said time, 2 pesetas and 50 céntimos.[4]

5. For the translation of the instruments referred to in No. 3 of the said article, they shall earn for every 24 lines, including the last one, even though there may not be this number if the translation is made from French, Italian, or Portuguese, 5 pesetas; if made from English or German, 10 pesetas, and from any other language, 12 pesetas.[5]

TRANSITORY PROVISIONS.

1. The present employees of exchanges whose offices are to continue in accordance with the new code, shall be confirmed therein, the vacancies which may occur in the future being filled in accordance with the laws and regulations which are to govern for their class.

2. The present commercial brokers may acquire the title of exchange agents by simply making up the bond.

Apprroved by Her Majesty:

MANUEL ALONSO MARTINEZ.

MADRID, *December 31, 1885.*

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[1] 15 pesos in Cuba and Porto Rico.

[2] 1 per 100.

[3] In Cuba and Porto Rico, 4 pesos.

[4] One-half peso in Cuba and Porto Rico.

[5] In Cuba and Porto Rico if the translation is made from French, English, Italian, or Portuguese, 1½ pesos; if from the German, 3 pesos, and if from any other language, 3½ pesos.

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APPENDICES.

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APPENDIX I.

ROYAL DECREE OF JANUARY 28, 1886, EXTENDING TO THE ISLANDS OF CUBA AND PORTO RICO THE CODE IN FORCE IN THE PENINSULA, WITH THE AMENDMENTS INDICATED.

On the recommendation of the colonial secretary, after hearing the codification commission of said provinces, in accordance with the council of secretaries and making use of the authorization granted my Government by article 89 of the constitution of the Monarchy, I decree the following:

ARTICLE 1. The code of commerce of August 22, 1885, in force in the Peninsula shall be in force in the territories under the jurisdiction of Cuba and Porto Rico, without other amendments than those introduced in articles 179, 201, 453, 547, 550, 559, 798, 804, 934, and 940, which shall be substituted by the following:

[We omit their insertion, because we have already reproduced them in the proper place, that is, immediately after the text of the respective article of the code for the Peninsula.]

ART. 2. The associations in existence on April 30, 1886, must make use of the right granted them by article 159 of the code of commerce, by means of a resolution adopted at a general extraordinary meeting expressly called in accordance with their by-laws, and in a proper case in accordance with the law of January 21, 1870, which is declared applicable to the islands of Cuba and Porto Rico.

These resolutions must be inserted in the *Gaceta de la Habana* or in that of San Juan de Puerto Rico, according to the island in which the associations are established, and a copy thereof must be presented in the commercial registry.

ART. 3. The government shall issue, before the day on which the new code goes into operation in the islands of Cuba and Porto Rico, the proper regulations for the organization and government of the commercial registry and of the commercial exchanges and the transitory provisions which may be necessary.

ART. 4. The Cortes shall be informed of this decree.

Given at the Palace on January 28, 1886.

MARIA CRISTINA.

GERMAN GAMAZO,
Colonial Secretary.

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APPENDIX II.

ROYAL DECREE OF AUGUST 6, 1888, EXTENDING THE CODE OF COMMERCE IN FORCE IN THE PENINSULA TO THE PHILIPPINES, WITH THE MODIFICATIONS INDICATED.

COLONIAL DEPARTMENT.

Royal decree.

The general commission on codes of the colonial department having introduced in the code of commerce in force in the Peninsula the modifications and changes required by the different culture, commercial usages, and the geographic situation of said islands, in order that it may be applied in the same in accordance with said commission, on the recommendation of the colonial secretary and by virtue of the authority granted my government by article 89 of the constitution of the Monarchy, in the name of my August Son, the King Don Alfonso XIII, and as Queen Regent of the Realm, I hereby decree the following:

ARTICLE 1. The annexed code of commerce for the Philippine Islands is hereby approved.

ART. 2. This code shall go in operation in the same fifteen days following its publication in the *Gaceta de Manila.*

This took place on November 3 to 16, 1888.

ART. 3. The privilege granted by article 159 to commercial corporations must be made use of by the same within the period of six months, and after said period has elapsed without use having been made thereof, it shall be understood that they are subject to the provisions of the code.

Given at San Sebastian on August 6, 1898.

MARIA CRISTINA.

TRINITARIO RUIZ CAPDEPON,
Colonial Secretary.

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APPENDIX III.

FORM OF LAW AMENDING SEVERAL ARTICLES OF THE CODE OF COMMERCE WITH RELATION TO THE SUSPENSION OF PAYMENTS AND BANKRUPTCIES.

DEPARTMENT OF GRACE AND JUSTICE.

Royal decree.

In the name of my August Son the King Don Alfonso XIII, and as Queen Regent of the Realm:

In accordance with the council of secretaries,

I hereby authorize the secretary of grace and justice to submit to the Cortes a form of law amending articles of the code of commerce and of the law of civil procedure and establishing new provisions with regard to suspension of payments and bankruptcies.

Given at the Palace on April 25, 1892.

MARIA CRISTINA.

FERNANDO COS GAYON,
Secretary of Grace and Justice.

FORM OF LAW.

TITLE FIRST.

AMENDMENT OF THE CODE OF COMMERCE IN REGARD TO THE SUSPENSION OF PAYMENTS AND BANKRUPTCIES.

First and last article. Articles 21, 46, 870, 871, 872, 873, 875, 876, 877, 878, 889, 893, 896, 909, and 921 of the code of commerce shall be drafted as follows:

ART. 21. On the sheet of the record of each merchant or association there shall be entered:

1. Name, firm name, or title.
2. The kind of commerce or transactions engaged in.
3. The date on which business is to begin or was begun.
4. The domicile, with a statement of the branches which may have been established, without prejudice to recording the branches in the registry of the province in which they are domiciled.
5. The articles constituting a commercial association, whatever may be its object or appellation, as well as instruments modifying, rescinding, or dissolving the said association.
6. General powers of attorney and revocation of the same, should there be any, given to managing partners, factors, employees, and any other agents.
7. The authorization of the husband for his wife to trade, and the legal or judicial authority of the wife to administer her property on account of the absence or incapacity of the husband.

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8. The revocation of the permission granted the wife to trade.

9. Dowry instruments, marriage agreements, and the deeds which prove the ownership of the personal property in addition to the dowry of the wives of merchants.

10. The issue of shares, certificates, and obligations of railroads and of all kinds of associations, be they of public works, credit, or others, stating the series and number of the certificates of each issue, their interest, revenue, amortization, and premium, should they have either, the total amount of the issue, and the property, works, rights, or mortgages, should there be any, which are liable for their payment.

There shall also be recorded, in accordance with the provisions of the foregoing paragraph, the issues made by private parties.

11. The issues of bank notes, stating the date, class, series, quantity, and value of each issue.

12. The certificates of industrial property, patents, and trade-marks, in the form and manner established by law.

Foreign associations which desire to establish themselves or create branches in Spain shall present and have recorded in the registry, besides their statutes and the documents prescribed for the Spanish ones, the certificate issued by the Spanish consul stating that said companies have been established and authorized according to the laws of the respective country.

13. The decisions declaring suspension of payments, bankruptcy, or the discharge of the bankrupt and the settlements made in the proceedings of suspension of payments or of bankruptcy.

If the merchant or association should not be recorded, the proper entry shall be officially made in order that the provisions of this paragraph may be carried out.

ART. 46. Neither can the general communication, delivery, or inspection of the books, correspondence, and other documents of merchants be decreed at the instance of a party, except in cases of liquidation, universal heirship, bankruptcy, or suspension of payments.

ART. 870. A merchant who, possessing sufficient property to cover all his debts, foresees the impossibility of doing so when they respectively fall due, may suspend payments, which shall be declared by the judge of first instance of his domicile in view of his declaration.

ART. 871. A merchant who possesses sufficient property to cover all his liabilities may also suspend payments within forty-eight hours following the falling due of an obligation which he may not have met.

ART. 872. A merchant who desires to suspend payments must attach to his petition the proposal of the extension he requests of his creditors. If in any manner whatsoever a discharge or reduction of the credits is desired the judge shall refuse to hear the petition for suspension of payments.

ART. 873. The proceedings for the suspension of payments shall conform to the provisions indicated in title 2 of this law. If the extension should be refused by the board the proceedings shall be concluded.

The provisions of articles 870 to 873 shall be applicable to the suspension of payments of general and limited copartnerships.

ART. 875. The declaration of bankruptcy shall be proper:

1. When the bankrupt requests it in person.

2. On a well-based request of a legitimate creditor.

3. Officially in the cases determined in the code, and especially when the flight of the merchant is well known.

ART. 876. It is the obligation of every merchant who is in a state of bankruptcy to inform the judge of first instance of his domicile within

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the three days following that on which he ceased to meet his current obligations.

For the declaration of bankruptcy at the instance of a creditor it shall be necessary that the request be based on a title by virtue of which an execution or writ of attachment was issued and that the result of the attachment should not be sufficient to cover the payment.

The declaration of bankruptcy at the instance of creditors shall also be proper, who, although they have not obtained a writ of attachment, prove their credits and that the merchant has generally defaulted in the payment of his current obligations, or that he has not complied with the agreement made at the time of suspending payments.

ART. 877. In case of the flight or concealment of a merchant, together with the closing of his offices, warehouses, or dependencies, without having left any person to manage his business for him and to meet his obligations, for the declaration of bankruptcy at the instance of creditors it shall be sufficient that the latter prove their title and said facts by means of a statement, which may be presented to the judge.

The judges in cases of well-known flight, or of which they have authentic information, shall officially make the declaration of bankruptcy and shall take the steps required for the occupation and care of the establishments of the fugitive, until the creditors make use of their right.

The provisions contained in this article shall be understood without prejudice to the proper resolutions in case of absconding or other crime defined in the penal code.

ART. 878. After the bankruptcy has been declared, the bankrupt shall be disqualified to administer his property.

All his acts of ownership and administration subsequent to the period to which the effects of the bankruptcy retroact shall be null.

After the examination of the credits against the bankruptcy has been concluded the creditors may order the immediate realization of all the property of the assets, the amount of which shall be deposited in the proper establishment, from which it can not be removed except by virtue of an order from the judge taking cognizance of the matter, countersigned by the judge of first instance, and with the intervention of the court clerk.

The realization of the assets in the manner mentioned shall not affect the rights of the creditors, nor the said graduations of the credits, nor the resolutions or settlements which the creditors may agree to at the proper time.

The rents due the owner from the time of the declaration of bankruptcy shall be considered as indispensable expenses, to be charged to the assets, and shall be paid every month in advance, or in the manner which the former may have agreed upon, the dispossession, if proper, being served on the receivers of the bankruptcy.

The department of public prosecution must be represented in all bankruptcies from the time of the decree declaring the same up to the conclusion of the suit, being obliged to request all that may be proper to secure the regularity of the procedure and the prosecution of punishable acts.

ART. 889. The following shall also be considered culpable bankrupts in law, reserving the exceptions they may propose and prove in order to prove the innocence of the bankruptcy:

1. Those who have not kept their books of accounts in the manner and with all the essential and indispensable requisites prescribed in title 3 of Book I, and those who, even though they keep said books with all these conditions, should have made errors in the same which may have caused injury to a third person.

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2. Those who have not made their statement of bankruptcy in the period and manner prescribed in article 871.

3. Those who, having absented themselves at the time of the declaration of the bankruptcy or during the progress of the suit, should not appear in person in the cases in which the law requires it of them, unless there is a legitimate obstacle.

4. Those who may not have complied with the settlements agreed upon in the proceedings of suspension of payments, unless the new bankruptcy is such that it can be declared fraudulent.

ART. 893. Accomplices in fraudulent bankruptcies shall be considered—

1. Those who assist in the removal of property of the bankrupt.

2. Those who having conspired with the bankrupt to suppose credits against him, or to increase the amount of those they may actually have against securities or property, and who sustain this supposition in the proceedings of examination or classification of the credits, or at any meeting of creditors of the bankruptcy.

3. Those who, in order to place themselves in preference to others to the prejudice of other creditors, by consent of the bankrupt, alter the nature or the date of the credit, even though this should be done before the declaration of bankruptcy.

4. Those who, deliberately and after the bankrupt suspended payments, should assist him in hiding or removing a portion of his property or credits.

5. Those who, being the holders of any property of the bankrupt at the time of making known the declaration of bankruptcy by the judge or court taking cognizance thereof, deliver it to the former and not to the legitimate administrators of the assets, unless, being a nation or province different from that of the domicile of the bankrupt, they prove that in the town of their residence the bankruptcy was unknown.

6. Those who refuse to deliver to the administrators of the bankruptcy the goods belonging to the bankrupt which may be in their possession.

7. Those who, after the publication of the bankruptcy, should admit indorsements of the bankrupt.

8. The legitimate creditors who, to the prejudice and in fraud of the assets, should make private or secret agreements with the bankrupt.

9. The agents who take part in a transaction of traffic or drafts which the merchant who has been declared bankrupt should make.

ART. 896. No action shall be brought for culpable or criminal bankruptcy before the judge has made the declaration of bankruptcy and that there is cause, by virtue thereof, to proceed criminally. The cases referred to in the third paragraph of article 877 are excepted.

ART. 909. There shall be considered as included in the provisions of the foregoing article, for the purposes indicated therein—

1. The unappraised and appraised dowry property which may remain in the possession of the husband if its receipt appears in a public instrument recorded in accordance with articles 21 and 27 of this code.

2. The paraphernal property which the wife may have acquired by reason of inheritance, legacy, or gift, either in the manner in which it was received, or if it has been subrogated or inverted in other property, provided the inversion or subrogation was recorded in the commercial registry in accordance with the provisions contained in the articles cited in the foregoing number.

The property and goods the bankrupt may have on deposit, under administration, leased, rented, or of which he enjoys the usufruct.

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4. The merchandise the bankrupt may have in his possession ordered to be sold, purchased, transferred, or delivered.

5. The drafts or promissory notes which, without indorsement or any statement which transfers their ownership, should have been sent the bankrupt for collection, and those he may have gained possession of for the account of another, drawn or indorsed directly in favor of the principal.

6. The moneys forwarded outside of account current to the bankrupt, for delivery to a determined person in the name and for the account of the principal, or to satisfy obligations which are to be met in the domicile of the former.

7. The amounts which are owed the bankrupt by reason of sales made for the account of another, and the drafts or promissory notes of the same character which are in his possession, even though they are not drawn in favor of the owner of the merchandise sold, provided it is proven that the obligation arises therefrom and that they were in the possession of the bankrupt for the account of the owner in order to be cashed and the amounts thereof to be forwarded at the proper time, which shall be legally presumed if the amount should not have been entered on account current between both.

8. The goods sold to the bankrupt for cash, the price of which has not been paid at all or only in part, while they remained packed in the warehouses of the bankrupt, or in the manner in which the delivery was made, and when they are in such condition as to be specifically distinguished by the marks and numbers of the packages or bales.

9. The merchandise which the bankrupt may have purchased on credit, until the material delivery of the same has been made to him in his warehouses or in a place agreed upon, and that the bills of lading or shipping receipts of which may have been forwarded to him, after being shipped, by order and for the account and risk of the purchaser.

In the cases of this number and of No. 8, the receiver of the bankruptcy may retain the goods purchased or demand them for the assets, paying the price thereof to the vendor.

ART. 921. The bankrupts not included in the foregoing article may obtain their discharge by proving that they have fully complied with the approved settlement they may have made with their creditors.

Should there have been no settlement, they shall be obliged to prove that all the obligations acknowledged in the bankruptcy proceedings were liquidated with the assets of the same or through subsequent payments.

The department of public prosecution shall be represented in the proceedings for discharge.

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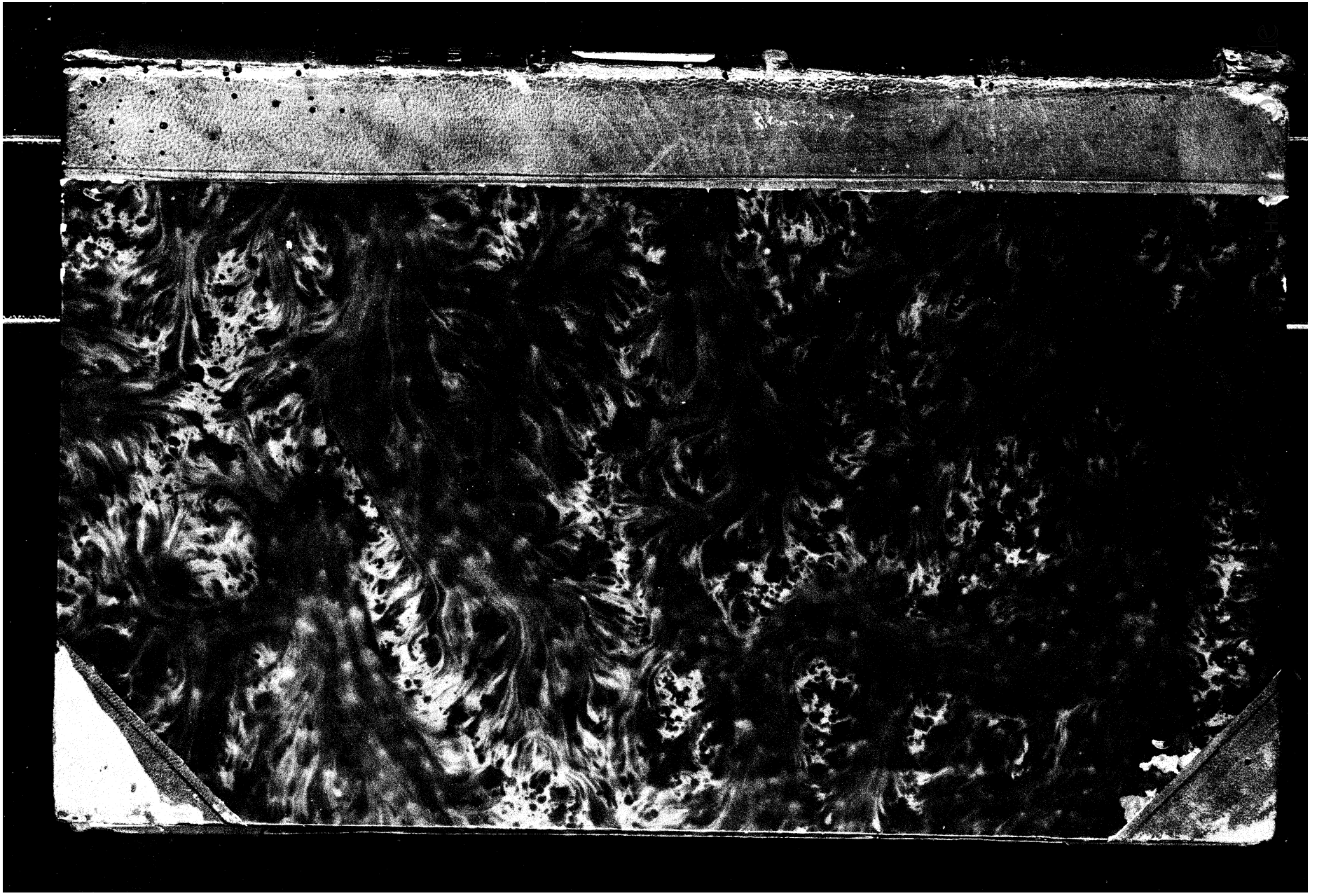
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